

No. 12257

United States
Court of Appeals
For the Ninth Circuit.

EDWARD R. BIGGS, JOHN R. HECTOR, H. J.
LUEDER and MARTIN M. MORENO,
Appellants,

vs.

JOSHUA HENDY CORPORATION,
Appellee.

Transcript of Record

Appeals from the District Court of the United States
for the Southern District of California
Central Division

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PAUL P. O'BRIEN,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants and Cross-Appellees:

MOHR & BORSTEIN,
412 W. 6th St.

PERRY BERTRAM,
1151 S. Broadway,
Los Angeles 15, Calif.

For Appellee and Cross-Appellant:

THELEN, MARRIN, JOHNSON &
BRIDGES,

SAMUEL S. GILL,

ROBERT G. IRVIN,

ROBERT H. SANDERS,
215 W. 6th St., Suite 1004,
Los Angeles 14, Calif. [1*]

* Page numbering appearing at bottom of page of original certified Transcript of Record.

In the District Court of the United States in and
for Southern District of California, Central
Division

No. 5875-B

M. E. ELLIOTT and CHARLES W.
CARNAHAN,

Plaintiffs,

vs.

CALIFORNIA SHIPBUILDING CORPORA-
TION, a corporation,

Defendant.

SECOND AMENDED COMPLAINT FOR
WAGES AND LIQUIDATED DAMAGES
DUE UNDER THE FAIR LABOR STAND-
ARDS ACT OF 1938

Plaintiffs complain and allege:

I.

Plaintiffs bring this action on behalf of themselves and other employees similarly situated, pursuant to Sec. 16(b) of the Fair Labor Standards Act of 1938 (Public No. 718, 75th Cong., CH. 676, 52 Stat. 1060-1069 (1938), 29 U.S.C., Sec. 201-219), hereinafter referred to as the Act to recover overtime wages, liquidated damages and attorney's fees.

II.

Jurisdiction of this action is conferred upon the

Court by Sec. 16(b) of the Act and by Sec. 24(8) of the Judicial Code (28 U.S.C. Sec. 41(8).)

III.

The other employees similarly situated to the plaintiffs and on behalf of whom this action is brought, in addition to the plaintiffs are: Herman Belin, Edward R. Biggs, Alva A. Evans, Achilles O. Foley, John S. Garcia, W. E. Gardner, John R. Hector, F. E. [2] Laird, Charles J. Lunn, H. J. Lueder, Martin M. Moreno, Richard N. Porter, James S. Yates, David Quick.

IV.

Defendant is a corporation organized under the laws of the State of Delaware, authorized to do business therein and having its principal place of business in the County of Los Angeles, State of California, within the jurisdiction of this Court.

V.

At all times mentioned herein, defendant was engaged at its said place of business in the County of Los Angeles, State of California, within the jurisdiction of this Court, in interstate commerce and in the production of goods, to wit, ships, for interstate commerce within the meaning of the Act.

VI.

Within three years last past, the defendant employed the plaintiffs and the other employees similarly situated, on behalf of whom this action is brought, at its said place of business, in various occupations, in which plaintiffs and said employees

similarly situated were employed by the defendant in interstate commerce and in the production of goods, to wit, ships, for interstate commerce, within the meaning of the Act.

VII.

During their respective periods of employment by the defendant, as aforesaid, plaintiffs and said other employees similarly situated were compensated at various hourly rates. The precise periods of employment and hourly rates at which plaintiffs and each such employee were employed are contained in the books and records of the defendant and are not known to the plaintiffs at the present time. In substantially all of the weeks in which plaintiffs and other employees similarly situated were employed, they were credited with having worked forty-eight (48) hours, for forty (40) hours of which they were paid at straight time, and eight (8) hours of which [3] they were paid at time and one-half. In each week of their employment by the defendant, the plaintiffs and said other employees similarly situated worked hours in addition to said forty-eight (48) hours for which they were credited and paid, for which additional hours they were not credited and for which they received no compensation whatsoever. Said work was performed both during the time at which said employees were scheduled to take their lunch and before their shifts began and after their shifts ended, and the activities which they and each of them performed during said hours each day were and are compensable activities

within the meaning of the Fair Labor Standards Act of 1938 as amended by the Portal-to-Portal Act of 1947, by virtue of and in accordance with the express provisions of a written collective bargaining agreement then in effect between the plaintiffs, their collective bargaining representatives and the defendant.

VIII.

There is now due, owing and unpaid, from the defendant to the plaintiffs, and to each of the employees similarly situated, on behalf of whom this action is brought, a sum equal to the product of one and one-half times the regular rate at which each employee was employed, and the hours worked by each of them over and above forty-eight (48) each week for each week of his employment by the defendant, plus an equal amount as liquidated damages.

IX.

Sec. 16(b) of the Act provides that the Court in this action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee to be paid by the defendant.

Wherefore, plaintiffs pray for judgment against the defendant and in favor of the plaintiffs and each of the employees similarly situated, on behalf of whom this action is brought, in a sum equal to the product of one-and-one-half times the regular rate at which he was employed and the hours worked by each of them over and above forty-eight

(48) each week for each week of his employment by the defendant, [4] plus an equal amount as liquidated damages, plus attorney's fees for services rendered herein, for costs of suit, and all proper relief.

MOHR & BORSTEIN, and
PERRY BERTRAM,

By /s/ PERRY BERTRAM,
Attorneys for Plaintiffs. [5]

State of California,
County of Los Angeles—ss.

Edward R. Biggs being by me first duly sworn, deposes and says: that he is one of the plaintiffs in the above entitled action; that he has read the foregoing Second Amended Complaint for Wages and Liquidated Damages Due Under the Fair Labor Standards Act of 1938 and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

/s/ EDWARD R. BIGGS.

Subscribed and sworn to before me this 29th day of June, 1948.

[Seal] /s/ ELIZABETH N. DUMESNIL.
Notary Public in and for said County and State of
California.

Affidavit of service by mail attached.

Copy received.

[Endorsed]: June 30, 1948. [6]

[Title of District Court and Cause.]

PRE-TRIAL STIPULATION
OF FACTS AND ISSUES

Facts

It Is Hereby Stipulated between the plaintiffs and defendant through their respective counsel:

I.

At all times during the employment by defendant of the plaintiffs, and until October 27, 1945, the defendant produced ships under contracts with the United States Maritime Commission. Upon the completion of each ship, it was delivered, pursuant to said contracts, to the United States Maritime Commission at its shipyard at Terminal Island, County of Los Angeles, State of California.

Following the delivery of each ship, it was sent by the United States Maritime Commission from the State of California to points outside of the State of California.

II.

Defendant's Exhibit "A" is a copy of a contract between the United States Maritime Commission and the defendant, the [7] provisions of which except for delivery dates of ships to United States Maritime Commission, and method of payment to defendant, are identical to those contained in the other contracts which were in effect during the time material to the issues presented herein.

III.

During the period from and including July 24, 1944 to August 19, 1944, the defendant paid all foremen and leadmen for twenty minutes prior to and twenty minutes after their regular work shift. That from and including August 20, 1944, at which time the entire shipyard of defendant went on a two nine-hour shift basis, to and including January 7, 1945, defendant paid all foremen and leadmen for twenty minutes prior to and ten minutes after their regular work shift. Commencing on January 8, 1945, at which time the shipyard returned to the normal shift work hours, to and including September 2, 1945, the defendant paid foremen and leadmen for six minutes after their regular work shifts. Prior to July 24, 1944, and after September 2, 1945, defendant did not pay either foremen and leadmen for any time other than their regular working shift time.

IV.

Defendant's Exhibit "B" is a copy of a letter dated July 21, 1944, issued by the defendant's then Production Manager, J. S. Sides, and distributed as shown in said letter. Defendant's Exhibit "C" is a copy of a letter dated January 1, 1945, by J. M. Warfield, Assistant General Manager of the defendant, and distributed as shown in said letter. Defendant's Exhibit "D" is a copy of a letter dated August 31, 1945, issued by J. M. Warfield, then General Manager of the defendant.

V.

Plaintiff's Exhibit "1" is a copy of the collective bargaining agreement in existence between collective bargaining representatives of the plaintiffs and the defendant corporation, during the periods to which plaintiffs' claims relate. [8]

VI.

Defendant did not compensate the plaintiffs for lunch periods. Defendant's records do not show the plaintiff's lunch periods as hours worked. In the defendant's Answer to Interrogatories to be filed herein, the lunch periods of plaintiffs were not taken into account in indicating, therein, the number of days worked in each work week where more than forty hours was worked by each plaintiff.

Issues

1. Were the plaintiffs employed by the defendant in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938?

2. In which work weeks, if any, did any of the plaintiffs engage in work during their lunch periods or before their regular shift commenced or after their regular shift ended which constituted a compensable activity under the provisions of plaintiffs' Exhibit 1?

3. If any or all of these activities are com-

pensable, was the failure by defendant to pay plaintiffs therefor in good faith?

Dated: June 2, 1948.

MOHR & BORSTEIN and
PERRY BERTRAM,

By /s/ DAVID L. MOHR,
Attorneys for Plaintiffs.

THELEN, MARRIN,
JOHNSON & BRIDGES,

By /s/ ROBERT H. SANDERS,
Attorneys for Defendant.

It Is So Ordered.

Dated: June 21, 1948.

/s/ WM. C. MATHES,
U. S. District Judge.

[Endorsed]: Filed June 7, 1948. [9]

[Title of District Court and Cause.]

ORDER ON PRE-TRIAL PROCEEDINGS

This matter came on regularly for pre-trial proceedings on June 21, 1948 in the above entitled court, Honorable William C. Mathes, Judge Presiding, the plaintiffs being represented by their counsel, Mohr & Borstein, and Perry Bertram, by David L. Mohr and Perry Bertram, and the defendant

being represented by its counsel, Thelen, Marrin, Johnson & Bridges and Samuel S. Gill and Robert H. Sanders, by Robert H. Sanders, and the parties having presented to the Court a pre-trial stipulation with exhibits thereon marked for identification, and the Court having considered all matters then pending and being fully devised,

It Is Ordered:

1. The Pre-Trial Stipulation of the parties is ordered filed and pursuant thereto the following exhibits are marked for identification:

a. Employment Contract—Plaintiffs' Exhibit I for identification.

b. Contract between United States Maritime Commission [10] and Defendant—Defendant's Exhibit A for identification.

c. Copy of letter dated July 21, 1944, issued by Defendant's production manager J. S. Sides, Defendant's Exhibit B for identification.

d. Copy of letter dated January 1, 1945 issued by Defendant's assistant general manager — Defendant's Exhibit C for identification.

e. Copy of letter dated August 31, 1945 issued by Defendant's general manager—Defendant's Exhibit D for identification.

2. By Stipulation defendant's objections to interrogatories propounded by the plaintiffs are withdrawn, and the defendant is ordered to answer interrogatories supplying the following information separately for each plaintiff, for each work week

in which the defendant's records show the particular plaintiff to have worked forty (40) hours or more:

- a. The employee's regular rate of pay; and
- b. The number of days worked in each such work week. Said responses to interrogatories are to be served and filed by the defendant no less than fifteen (15) days before the date of trial.

3. Plaintiffs' Motion to Amend their Complaint, to include claims for activities performed before the regular shift began and after the regular shift ended and to name all employees on behalf of whom this action is brought, is granted with ten (10) days leave to serve and file such Amended Complaint.

4. The matter is continued to Monday, September 13, 1948 at 10:00 o'clock a.m. for further pre-trial proceedings and for setting for trial.

Dated: July 13, 1948.

/s/ WM. C. MATHES,
U. S. District Judge.

Approved as to form—July 12, 1948.

THELAN, MARRIN,
JOHNSON & BRIDGES,

By /s/ ROBERT H. SANDERS,
Attorneys for Defendant.

Affidavit of service by mail attached.

Copy received.

[Endorsed]: Filed July 13, 1948. [11]

[Title of District Court and Cause.]

ANSWER TO SECOND AMENDED
COMPLAINT

Defendant, Joshua Hendy Corporation, a corporation, formerly known as California Shipbuilding Corporation, answers the second amended complaint as follows:

I.

Answering the allegations contained in paragraph II of said second amended complaint, defendant denies each and every allegation thereof.

II.

Answering the allegations contained in paragraph V of said amended complaint, defendant alleges that until October 27, 1945, said defendant was engaged in the production of ships under contracts with the United States Maritime Commission at the Commission's shipyard at Terminal Island, California. Except as herein expressly admitted, defendant denies each and every allegation contained in said paragraph V of the complaint. [12]

III.

Answering the allegations contained in paragraph VI of said amended complaint, defendant alleges that plaintiffs were employed by defendant in various classifications and at various rates of pay in work necessary to the production of said ships being constructed under said contracts with the

United States Maritime Commission until October 27, 1945. Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph VI of said complaint.

IV.

Answering the allegations contained in paragraph VII of said amended complaint, defendant alleges that plaintiffs, and each of them, were fully paid for all hours in each work week in which said plaintiffs worked in excess of forty hours, and that any and all payments were made to said plaintiffs, and each of them, as required by the provisions of The Fair Labor Standards Act, as amended. Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph VII of said complaint.

V.

Answering the allegations contained in paragraph VIII and IX of said amended complaint, defendant denies each and every allegation contained in said paragraphs VIII and IX.

As a Separate, Further, and First Affirmative Defense, Defendant Alleges:

That the failure, if any, by defendant to fully comply with the Act was in good faith, and that defendant had reasonable grounds for believing that its act or omission in not paying each of the plaintiffs sufficient overtime compensation was not a violation of the Act.

As a Further, Second, and Separate Affirmative Defense, Defendant Alleges:

That the above entitled Court does not have jurisdiction of [13] the subject matter of this action and that the second amended complaint should be dismissed upon said grounds.

Wherefore, defendant prays that plaintiffs, and each of them, take nothing by their complaint and that defendant go hence with its costs.

Dated: July 27, 1948.

THELEN, MARRIN,
JOHNSON & BRIDGES,
/s/ ROBERT H. SANDERS,
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed July 28, 1948. [14]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause having come on regularly for trial before the above-entitled Court, Honorable William C. Mathes, Judge presiding, on January 19, 1949, the plaintiffs being present in person and by their counsel, Mohr & Borstein and Perry Bertram, by David L. Mohr and Perry Bertram, and the defendant being represented by its counsel, Robert

H. Sanders, of Thelen, Marrin, Johnson & Bridges, Samuel S. Gill and Robert H. Sanders, and the parties having introduced evidence, both oral and documentary, having entered into various stipulations of facts, having submitted pre-trial memoranda of law, and having been fully heard, and the cause having been submitted,

The Court, being fully advised, makes the following

Findings of Fact

1. This action was brought by the Plaintiffs to recover from the Defendant unpaid overtime wages and liquidated damages as provided by the Fair Labor Standards Act of 1938 [16] (Public No. 718, 75th Cong., Ch. 676. 52 Stat. 1060-1069 (1938), 29 U.S.C., Sec. 201-219) hereinafter referred to as the Act.

2. At all times mentioned in these Findings, Defendant was a corporation duly organized under the laws of the State of Delaware, authorized to do business in California, and having and operating a shipyard located at Wilmington, California, within the territorial jurisdiction of this Court, where it was engaged in producing ships. All of the ships produced by the Defendant were, upon their completion, delivered at said shipyard to the United States Maritime Commission, which thereafter transported, delivered or took said ships from the State of California to points outside the State of California.

3. Said ships were produced by the Defendant pursuant to contracts with the United States Maritime Commission, let by said Commission under the provisions of Public Law 247 (77th Cong.) approved August 25, 1941, authorizing it to construct merchant vessels of such type, size and speed as it may determine to be useful for carrying on the commerce of the United States, and suitable for the conversion into Naval or military auxiliaries, and said contracts were let by said Commission upon a determination that the vessels described in said contracts were of a type, size and speed which would be useful for carrying on the commerce of the United States and suitable for conversion into Naval or military auxiliaries.

4. On October 18, 1943, and until various dates, which will hereinafter be set forth as they may be material, the defendant employed each of the plaintiffs at and about its said shipyard in Wilmington, California, in various capacities, in each of which said plaintiffs and each of them were employed by the defendant in the production of said ships and in processes and in occupations necessary to said production of ships. [17]

5. At all times herein mentioned and material to the claims of the plaintiffs, there was in effect between the plaintiffs, their collective bargaining representatives and defendant, a collective bargaining agreement which contained the following material provisions:

“4. Hours of Employment and Overtime.

Forty (40) hours shall constitute a work week, eight (8) hours per day, five (5) days per week. Monday to Friday, inclusive, between the hours of 8 a.m. and five p.m., except that where, as to any locality or as to any plant of any Employer, existing traffic conditions render it desirable to start the day shift at an earlier hour, such starting time may, with agreement of the Employer affected and the local Metal Trades Council, be made earlier, but in no event earlier than seven (7) a.m. Overtime at the rate of one and one-half times the established hourly rate shall be paid for all work performed in excess of eight (8) hours per day and forty (40) hours per week. Since this agreement is based on the intent of six-day-per-week operation, all work performed on Saturdays shall be paid for at one and one-half times the established hourly rate. Overtime at double the established rate shall be paid for all work performed on Sundays and Holidays. These provisions relative to overtime payment and for Saturday work shall be effective only during the period of the National Emergency; provided, however, that this establishment of this emergency rate shall not be used as a subterfuge to defeat the double-time provisions for Saturday work which would be in effect were it not for the National Emergency.

“The provision for time and one-half for overtime [18] and on Saturdays established for the duration of the National Emergency shall automati-

cally terminate whenever the President of the United States shall proclaim that such National Emergency no longer exists; thereafter, all over-time shall be computed on a double-time basis.

“Holidays shall be recognized by local Metal Trades Councils. When a recognized holiday falls on Sunday, the day observed by the Council shall be considered as a holiday and paid for as such.

“5. Shift Work.

Shift work will be permitted in all classifications without restriction on the following basis:

(a) The regular starting time of the day shift shall be eight (8) a.m., except that where, as to any locality or as to any plant of any Employer, existing traffic conditions render it desirable to start the day shift at an earlier hour, such starting time may, with the agreement of the Employer affected and the local Metal Trades Council, be made earlier, but in no event earlier than seven (7) a.m.

(b) The regularly established starting time of the day shift shall be recognized as the beginning of the twenty-four (24) hour work day period. When irregular or broken shifts are worked, overtime rates shall apply before the regular starting time and after the regular quitting time of the shift on which the Employee is regularly employed.

(c) First or regular daylight shift: An eight and a half (8½) hour period less thirty minutes for meals on the employee's time. Pay for a full shift period shall be a sum equivalent to eight (8) times the [19] regular hourly rate with no premium.

“Second Shift: An eight (8) hour period less thirty minutes for meals on employee’s time. Pay for a full second shift period shall be a sum equivalent to eight (8) times the regular hourly rate plus ten per cent (10%).

“Third Shift: A seven and one-half ($7\frac{1}{2}$) hour period less thirty minutes for meals on employee’s time. Pay for a full third shift period shall be a sum equivalent to eight (8) times the regular hourly rate plus fifteen per cent (15%).

“(d) For work on any shift less than the full shift period, pay shall be the corresponding proportionate part of the pay for the full shift period, provided such amount be not less than the minimum pay prescribed in Paragraph 10 hereof.”

6. During the entire period of their employment by the defendant, each of the following named plaintiffs to wit:

EDWARD R. BIGGS
ACHILLES O. FOLEY
JOHN S. GARCIA
JOHN R. HECTOR
H. J. LUEDER
MARTIN M. MORENO
JAMES S. YATES

were compensated for all of the hours between their respective starting times at the beginning of their respective shifts and their quitting times at the end of their respective shifts except for one-half hour each day during which each of them was scheduled

to take a lunch period and for which one-half hour each day each of them received no compensation.

7. During the entire period of their employment by the defendant, each of the plaintiffs named in Paragraph 6 of these findings, were required by the defendant to and did spend his entire shift including the said one-half hour lunch period at his [20] place or places of duty in the performance of the duties for which he was hired by the defendant and was not excused or relieved therefrom for the purpose of taking lunch. Each of said one-half hour lunch periods constituted hours worked for which said plaintiffs received no compensation.

8. No evidence was presented by or on behalf of the following named plaintiffs to wit:

HERMAN BELIN

CHARLES W. CARNAHAN

M. E. ELLIOTT

ALVA A. EVANS

W. E. GARDNER

F. E. LAIRD

CHARLES J. LUNN

RICHARD N. PORTER

and as to them the Court finds that they did not work any hours in excess of 40 in a week for which they were not properly compensated.

8(a). None of the plaintiffs performed any activities either before their regular shifts began or after their regular shifts ended for which they were

not fully and properly compensated as required by the Fair Labor Standards Act of 1938. [22]

9. Certain of the plaintiffs named in Paragraph 6 of these findings worked on the day shift for all or some portion of their employment by the defendant following October 18, 1943 and the remaining plaintiffs worked on either the swing shift or the grave-yard shift during all of their employment by the defendant following October 18, 1943.

10. By stipulation between the parties entered into in open court, the parties agreed that the periods of employment and number of hours worked as reflected in defendant's records would be used as the basis of computing the compensation, if any, due to any of the plaintiffs. Pursuant to said stipulation, the parties have agreed that the following named plaintiffs worked on the day shift for all or some portion of their employment by the defendant from October 18, 1943 to their respective termination and that the following amounts are due each of the plaintiffs named in Paragraph 6 of these findings for the number of half-hour lunch periods worked by them on the day [21] shift in excess of 40 hours in a week and the Court finds, in accordance therewith, the following amounts due to the respective plaintiffs after whose name the amount appears:

Achilles O. Foley.....	\$210.90
John S. Garcia.....	37.80
John R. Hector.....	35.30
James S. Yates.....	573.88

11. Defendant's failure to pay to each of said plaintiffs the unpaid wages set forth after their respective names was in good faith and without reason to believe that such failure was in violation of the law.

12. The plaintiffs have employed Mohr & Borstein and Perry Bertram, attorneys at law, to represent them in this action, and said attorneys have rendered services to the plaintiffs of the reasonable value of \$600.

From the foregoing Findings of Fact, the Court draws the following

Conclusions of Law

1. Jurisdiction of this action is conferred upon the Court by the Act and by Section 24(8) of the Judicial Code (28 U.S.C., Section 41(8)), and nothing contained in Section 2, and particularly Section 2(d) of the Portal to Portal Act of 1947 (29 U.S.C., Section 252), deprives the Court of said jurisdiction.

2. Each of the plaintiffs was employed by the defendant from October 18, 1943 to and including the date of his respective termination in the production of goods for interstate commerce and in processes and occupations necessary to such production within the meaning of the Act.

3. The following named plaintiffs, to wit, Edward R. Biggs, Achilles O. Foley, John S. Garcia, John R. Hector, H. J. Lueder, Martin M. Moreno,

James S. Yates, performed activities for, at the request of, and under the direction of the [23] defendant, during their respective lunch periods, which said activities were compensable within the meaning of Section 2 of the Portal-to-Portal Act of 1947, by an express provision of the written contract in effect at the time of such activity between said plaintiffs, their bargaining representatives and the defendant.

4. Each of the following named plaintiffs is entitled to recover, of the defendant, the sum set forth after his name as and for unpaid overtime wages for each lunch period while he was employed by the defendant on the day shift from and after October 18, 1943 and which lunch period or periods represented hours in excess of 40 in a week

Achilles O. Foley.....	\$210.90
John S. Garcia.....	37.80
John R. Hector.....	35.30
James S. Yates.....	573.88

5. Said plaintiffs are not entitled to recover any additional sum as or for liquidated damages.

6. The defendant is entitled to credit against all of the half-hour lunch periods worked by any of the plaintiffs on the swing shift by reason of the half-hour premium paid to said plaintiffs pursuant to Paragraph 5(c) of the Collective Bargaining Agreement relative to "Second Shift" as set forth in Paragraph 5 of the foregoing Findings of Fact.

7. The defendant is entitled to credit against all of the half-hour lunch periods worked by any of the plaintiffs on the grave-yard shift by reason of the one hour premium paid to said plaintiffs pursuant to Paragraph 5(c) of the Collective Bargaining Agreement relative to "Third Shift" as set forth in Paragraph 5 of the foregoing Findings of Fact. [24]

8. Plaintiffs Edward R. Biggs, H. J. Leuder and Martin M. Moreno are not entitled to recover any unpaid overtime wages or liquidated damages by reason of the fact that their lunch periods were worked on the swing shift or on the grave-yard shift during their entire periods of employment and plaintiffs John S. Garcia and John R. Hector are not entitled to recover any unpaid overtime wages or liquidated damages for the portion of their employment worked by them on the swing shift or grave-yard shift.

9. Herman Belin, Charles W. Carnahan, M. E. Elliott, Alva A. Evans, W. E. Gardner, F. E. Laird, Charles J. Lunn and Richard N. Porter are not entitled to recover any unpaid overtime wages or liquidated damages for the reason that there is no evidence of their having worked overtime for which they were not paid.

10. Plaintiffs are entitled to recover of the defendant the sum of \$600, payable directly to Mohr & Borstein and Perry Bertram as and for attorney's fees for legal services rendered herein.

11. Costs to be awarded to the respective prevailing parties in the sum of \$. to the plaintiffs and \$. to the defendant.

Los Angeles, California, February 21, 1949.

/s/ WM. C. MATHES.

Approved as to Form February 15, 1949.

THELEN, MARRIN,
JOHNSON & BRIDGES,
SAMUEL S. GILL and
ROBERT H. SANDERS,

By /s/ ROBERT H. SANDERS,
Attorneys for Defendant.

[Endorsed]: Filed Feb. 21, 1949. [25]

In the District Court of the United States in and
for the Southern District of California, Central
Division

Civil Action No. 5875-WM

M. E. ELLIOTT, et al,

Plaintiffs,

vs.

JOSHUA HENDY CORPORATION,

Defendant.

JUDGMENT

This cause having come on regularly for trial before the above entitled Court, Honorable William C. Mathes, Judge presiding, on January 19, 1949,

the plaintiffs being present in person and by their counsel, Mohr & Borstein and Perry Bertram, by David L. Mohr and Perry Bertram, and the defendant being represented by its counsel, Robt. H. Sanders of Thelen, Marrin, Johnson & Bridges, Samuel S. Gill and Robert H. Sanders and the parties having introduced evidence, both oral and documentary, having entered into various stipulations of facts, having submitted pre-trial memoranda of law, and having been fully heard, and the cause having been submitted

The Court, having made its Findings of Fact and drawn its Conclusions of Law, orders Judgment as follows:

It is ordered, adjudged and decreed that the following named plaintiffs have and recover of the defendant the sums set forth respectively after their names as overtime wages. [26]

Achilles O. Foley.....	\$210.90
John S. Garcia.....	37.80
John R. Hector.....	35.30
James S. Yates.....	573.88

It is further ordered, adjudged and decreed that the following named plaintiffs take nothing by their complaint herein:

HERMAN BELIN

EDWARD R. BIGGS

CHARLES W. CARNAHAN

M. E. ELLIOTT

ALVA A. EVANS

W. E. GARDNER

F. E. LAIRD

H. J. LUEDER

CHARLES J. LUNN

MARTIN M. MORENO

RICHARD N. PORTER

It is further ordered, adjudged and decreed that plaintiffs have and recover of the defendant the further sum of \$600 as and for attorneys' fees herein, payable directly to Mohr and Borstein, and Perry Bertram, attorneys for the plaintiffs; and

It is further ordered, adjudged and decreed that plaintiffs, Achilles O. Foley, John S. Garcia, John R. Hector and James S. Yates have their costs of suit incurred herein taxed in the sum of \$30.00 and that defendant have its costs herein taxed in the sum of \$. from the plaintiffs other than Achilles O. Foley, John S. Garcia, John R. Hector and James S. Yates.

Dated: February 21, 1949.

/s/ WM. C. MATHES,
Judge.

Approved as to Form February 15, 1949.

THELEN, MARRIN,
JOHNSON & BRIDGES,
SAMUEL S. GILL and
ROBERT H. SANDERS,

By /s/ ROBERT H. SANDERS,
Attorneys for Defendant. [27]

Judgment Satisfied 4/14/49. By flg sep satis of
Yates, Garcia, Foley, and for plfs attys fees.

EDMUND L. SMITH,
Clerk U. S. District Court. Southern District of
California.

By /s/ EDW. F. DREW,
Deputy.

[Endorsed]: Filed and entered Feb. 21, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the defendant, Joshua Hendy Corporation and
to Thelen, Marrin, Johnson & Bridges, Samuel S.
Gill and Robert H. Sanders, its attorneys and to the
Clerk of the above entitled court:

Notice is hereby given that Plaintiffs Edward
R. Biggs, John S. Garcia, John R. Hector, H. J.
Lueder, Martin M. Moreno, hereby appeal to the
Circuit Court of Appeals for the 9th Circuit from
the final judgment entered in this action on February
21, 1949.

March 18, 1949.

MOHR & BORSTEIN and
PERRY BERTRAM,

By /s/ PERRY BERTRAM,

Attorneys for said Plaintiffs.

Affidavit of service by mail attached.

[Endorsed]: Filed Mar. 22, 1949. [28]

[Title of District Court and Cause.]

NOTICE OF CROSS APPEAL

Notice is hereby given that Joshua Hendy Corporation, defendant in the above entitled action, cross appeals to the Circuit Court of Appeals for the Ninth Circuit from:

(1) That portion of the final judgment entered in this Court and entered in this Court on February 21, 1949, in Civil Order Book No. 56, page 150, which granted recovery to appellants for activities performed during lunch period.

Dated: April 11, 1949.

THELEN, MARRIN,
JOHNSON & BRIDGES,
By /s/ ROBERT H. SANDERS,
Attorneys for Defendant.

[Endorsed]: Filed April 13, 1949. [30]

[Title of District Court and Cause.]

STIPULATION TO EXTEND TIME TO COMPLETE AND DOCKET RECORDS ON APPEAL AND ORDER

For the reason that Joshua Hendy Corporation appellee and cross-appellant is obliged to proceed in this matter with the consent and pursuant to instructions of the United States Maritime Commission and it is anticipated that those instructions will affect the record to be prepared on an appeal and to date such instructions have not yet been received, although they have been requested.

It is stipulated by and between the appellants and cross-appellees on the one hand and the appellee and cross-appellant on the other by and through their respective counsel that the time for preparing the record and filing and docketing the same in the Circuit Court of Appeals with respect both to the appeal and to the cross-appeal be extended to June 9, 1949.

MOHR, BORSTEIN &
PERRY BERTRAM,

By /s/ PERRY BERTRAM,

Attorneys for Appellants and
Cross-Appellants.

THELEN, MARRIN,
JOHNSON & BRIDGES,
SAMUEL S. GILL &
ROBT. H. SANDERS,

By /s/ ROBERT H. SANDERS,

Attorneys for Appellee and
Cross-Appellant. [31]

ORDER

Upon the filing of the foregoing Stipulation and good cause appearing, therefore, the time for preparing, filing and docketing the record on an appeal and on the cross-appeal is hereby extended to and including June 9, 1949.

April 27, 1949.

/s/ WM. C. MATHES,

U. S. District Judge.

[Endorsed]: Filed April 27, 1949. [32]

[Title of District Court and Cause.]

DISMISSAL OF APPEAL BY JOHN S.
GARCIA AND ORDER

Appellant John S. Garcia hereby dismisses his appeal herein for himself alone and for no other appellant.

April 28, 1949.

MOHR, BORSTEIN and
PERRY BERTRAM,
By /s/ PERRY BERTRAM,
Attorneys for Appellant,
John S. Garcia.

ORDER

Upon the filing of the foregoing Dismissal of Appeal, it is hereby ordered that the appeal of John S. Garcia be and the same hereby is dismissed as to him alone but as to no other appellant.

May 9, 1949.

/s/ WM. C. MATHES,
U. S. District Judge. [33]

Received copy of the within Dismissal of Appeal this 6th day of May, 1949.

/s/ ROBERT H. SANDERS,
Attorney for Defendant.

[Endorsed]: Filed May 9, 1949. [34]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of Cali-

fornia, do hereby certify that the foregoing pages numbered from 1 to 36, inclusive, contain the original Second Amended Complaint for Wages and Liquidated Damages Due Under the Fair Labor Standards Act of 1938; Pre-Trial Stipulation of Facts and Issues; Order on Pre-Trial Proceedings; Answer to Second Amended Complaint; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Notice of Cross-Appeal; Stipulation and Order Extending Time to File Record and Docket Appeal; Dismissal of Appeal by John S. Garcia; and Stipulation Designating Record on Appeal which, together with original reporter's transcript of proceedings on January 19, 1949 and Original plaintiff's Exhibit 1, original defendant's Exhibits A, E-1 and E-2, transmitted herewith, constitute the record on appeals to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 one-half of which has been paid by each of the appellants and cross-appellant.

Witness my hand and the seal of said District Court this 3rd day of June, A.D. 1949.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

In the District Court of the United States in and for
the Southern District of California, Central
Division

No. 5875-WM-Civil

M. E. ELLIOTT, et al.,

Plaintiffs,

vs.

JOSHUA HENDY CORPORATION,

Defendant.

Honorable William C. Mathes,
Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

Wednesday, January 19, 1949

Appearances:

For the Plaintiffs: Mohr & Borstein, Esquires;
By David L. Mohr, Esquire and Perry Bertram,
Esquire.

For the Defendant: Thelen, Marrin, Johnson &
Bridges, Esqs.; By Robert H. Sanders, Esquire.

JAMES S. YATES

one of the plaintiffs herein, called as a witness by
the plaintiffs, being first sworn, was examined and
testified as follows:

The Clerk: Please state your name.

The Witness: James S. Yates.

(Testimony of James S. Yates.)

Direct Examination

By Mr. Bertram:

Q. Mr. Yates, in the questions I am about to ask you I am going to refer only to the period of your employment with Joshua Hendy Corporation following October 18, 1943. So, unless I indicate to the contrary that I am asking about some other period, you will direct your answers to the period following that date.

What was your occupation with the defendant corporation?

A. Foreman of the oxygen and acetylene plant.

Q. What were your duties in that capacity?

A. Well, the operation of the entire plant, two plants, [14*] was under my direct supervision; also, that I did physical work there besides the supervisory work.

Q. How many oxygen plants were there at the yard?

A. There was one oxygen plant.

Q. How many acetylene plants?

A. One acetylene plant in the shipyard.

Q. Each of those plants entirely supplied the whole yard for its oxygen and its acetylene, is that right?

A. The entire yard.

Q. Where did you obtain your supply of oxygen?

A. The oxygen was supplied by trucks from the Linde Air Products Co.

Q. How was it handled?

A. It was pumped out of the oxygen tank or

* Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of James S. Yates.)

truck into a holding tank, into a stand tank, and from there into my converters and created a vacuum of gas.

Q. How was the acetylene handled in the acetylene plant?

A. All the acetylene we received was carbide in 250-pound drums. It was discharged into the generators and by its own natural pressure piped out into the yard.

Q. In other words, you generated your own acetylene there at the plant from the raw materials?

A. From the raw materials; yes, sir.

Q. Mr. Yates, what are you claiming in this action?

A. The lunch period which we never did have. We worked [15] throughout our lunch period.

Q. Will you describe the circumstances of your employment with respect to your duties during your regular work period of your shift and if any were performed during your lunch period?

A. Well, we had the duties of the entire shift. At the noon hour we used to do our running repairs on our generator or, as generally the case, we were out of gas about that time so we re-charged during the lunch period in order to cut out these road-built air pressures.

Q. Let me go back a moment and ask you just how many men were under your immediate supervision?

A. Well, I had technical supervision over 36, but in my day shift I had an average of three men.

(Testimony of James S. Yates.)

Q. Where were those men stationed and what were they to do?

A. One man in the oxygen plant—I had four men, rather. Pardon me. One man in the oxygen plant, myself—I mean myself as one man, four men including myself—three in the acetylene plant and one in the oxygen plant.

Q. With the exception of the man at the oxygen plant, were your duties about the same as his or were they different in any way?

A. Well, he had just strictly the oxygen plant to handle. He was strictly an oxygen engineer and his duties would be to keep his eye on the equipment, unloading the tank cars. And, [16] incidentally, when a tank car was started to be unloaded, you could not break it off. It took about six hours to unload a car.

Q. Did you help in that operation?

A. Yes; I helped in that operation.

Q. Did you help in the operation of the oxygen plant itself? A. Oh, yes.

Q. In what way? What did you do physically in the operation of that plant?

A. Well, I changed from one converter to another. Cooling time we would switch over to a full converter.

Q. What was involved in changing from one converter to another?

A. You pump your liquid from your stand tank into your converter. It is a mere matter of turning on motors and opening and closing valves.

(Testimony of James S. Yates.)

Q. How close attention to the valves and equipment is required?

A. Very close, because you are handling an explosive.

Q. Can your equipment be left unattended?

A. No.

Q. During the shift is this the fact: That you and the other employee in the oxygen plant were the only men available on the day shift to watch the oxygen plant? [17]

A. Yes, sir; just the crew, because nobody else was trained to handle the equipment.

Q. Will you tell us what the fact is with respect to the operation of the acetylene plant?

A. The acetylene, we had a loading platform in the middle of the plant. We would dump our carbide into a hopper, we call it, run it up on the trolley to over the generators to be recharged, to re-charge the generator, which means you change the water in it, getting out your slush water from the previous charge, clean it, and then re-charge and set your machine all again.

Q. Did you, Mr. Yates, do the physical work in connection with that operation?

A. Yes; I was a working man.

Q. As well as the man under you?

A. I did the identically same work as any one man.

Q. And close attention is required to the acetylene equipment?

A. Very close.

(Testimony of James S. Yates.)

Q. What is the reason for that close attention?

A. Well, you have one of the most explosive gasses there is. We had four explosions all told down there, one very bad one and three minor ones. You can't walk away from acetylene. You have to watch it, especially the rate of output we were obtaining which was above the highest capacity of our equipment. [18]

Q. In addition to watching the gauges and adjusting the valves to correspond to the readings on the gauges, what else in a physical way is required to operate that plant, that is, what did you do physically?

A. You have a motor on each machine, a feed motor, which we made all our running repairs on ourselves.

Q. When you say "ourselves" do you mean that you did that?

A. The crew, yes; myself and the crew. Generally I handled the motors because I did not have any boys that I thought knew enough about it to handle that end of it; so I generally did the motor repair.

Q. In what way, if at all, did your duties during the lunch period differ from your duties during the rest of the shift?

A. Well, we had less stand-by time in the lunch period than we would during the shift. Sometimes during the shift we would have everything charged and we would have a pressure for 10 or 15 minutes.

(Testimony of James S. Yates.)

During the lunch time we worked hard all the time because that was our only chance to make these running repairs.

Q. Why was that your only chance, Mr. Yates?

A. The yard, of course, was not using the acetylene or the oxygen at that particular time; so it gave us a chance to re-charge, to make our repairs, you see, without using pressures on the gas. [19]

Q. Mr. Yates, did you bring your lunch to work on your shift? A. Yes, sir.

Q. Did you eat your lunch at some time or other during the shift?

A. During the shift any time we ate a sandwich now and a sandwich then.

Q. Will you describe the manner in which you did eat your lunch?

A. Generally when I was on the upper platform where I am watching these gauges and the operating run, I would take a sandwich then at that time. All our gauges were faced so you could look at them from one position, and stand by up there and look at the gauges to see if any machines were quitting on me.

Q. In eating your lunch and watching the gauges as you describe were you ever interrupted by the requirement of performing some manual work yourself?

A. Oh, yes; lay the sandwich down on my desk, go on about my job, picking it up later.

Q. How often did that occur?

(Testimony of James S. Yates.)

A. Well, it was quite often enough not to be rare, I would put it that way. It happened very often.

Q. Were you ever relieved of all your duties, Mr. Yates, for the purpose of eating your lunch?

A. No, sir. [20]

Q. Did you eat your lunch during the regular lunch period? A. Customarily not; no.

Q. Did you ever eat your lunch continuously? By that I mean this: From the time you started to eat your lunch were you able to complete your lunch in one operation?

A. There could be some time, but I am a rather light eater at noon, so I don't believe I ever ate lunch complete at one time that I remember.

Q. What I am trying to ask you, Mr. Yates, is this: Were there ever any times that you can now recall where you were able to sit down and complete your lunch without being interrupted by some of your duties?

A. No, sir; I can't recall a time that I was not on the alert. You see, when an acetylene plant shuts down that is your most dangerous period after you have your run going hard. When you have to shut down quick like you do at the noon hour, and the charger starts to regenerate, that is when you get your explosions. So consequently, during the noon hour you are watching more closely than you would be during your runs. [21]

(Testimony of James S. Yates.)

Q. Were you ever paid for the half hour lunch period you have described? A. No, sir.

Mr. Bertram: You may cross examine.

Cross Examination

By Mr. Sanders:

Q. Mr. Yates, you worked in the acetylene plant there for Calship from 1941 to 1943, did you not?

A. Yes, sir; from the beginning until the time I was relieved.

Q. You have had some 20-odd years' experience in acetylene plants, haven't you?

A. Roughly, yes, sir.

Q. As I understood, the lunch period that you were talking about during direct examination was the regular shipyard lunch period when you closed the acetylene plant down, is that right?

A. Yes, sir. We didn't close it down. The pressure was not being taken away from us. In other words, they were not using gas.

Q. And that was probably the most dangerous period of [22] the shift as far as the acetylene plant was concerned?

A. As far as the acetylene plant quick shutdowns of the machinery is the serious part.

Q. So customarily both you and your men would eat either before or after the regular shipyard lunch period?

A. We ate whenever we could. Some fellow might take a sandwich at 10:00 o'clock in the morning, another at 11:00.

(Testimony of James S. Yates.)

Q. I mean ordinarily you would not eat during the regular shipyard lunch period? A. No, sir.

Q. Because you needed all hands in the acetylene plant to take care of the machinery when it was shut down?

A. We needed them very badly then.

Q. You needed all of the employees in the acetylene plant and in the oxygen plant under you, and each of them were hourly rate men, were they not?

A. Yes, sir.

Q. All hourly rate men in the shipyard had a half hour lunch period, did they not?

A. Theoretically, yes, sir.

Q. You knew that there was a union contract covering all hourly men down there, did you not?

A. Surely.

Q. In fact it was a closed shop, was it not?

A. A closed shop; yes, sir. [23]

Q. You knew there were a lot of union stewards in that yard at all times, supervising the working conditions, did you not?

A. That is right—pardon me, sir. There were frequently union stewards. Mr. Mickey McDonald came out to the yard on a complaint that we were working lunch hours, and he said, “There is a war on, Yates. Work your men through the lunch hour.”

Q. I didn’t get what he said.

A. The union business agent, Mr. McDonald, came out the early part of the war when I had a complaint made against me by a shop steward, a boilermaker shop steward. It was none of his busi-

(Testimony of James S. Yates.)

ness, anyway. They cited me in for working my crew, and the business agent came out and said, "Work your crew. There is a war on. You got a gas plant."

Q. That is the business agent who told you that?

A. Yes, sir.

Q. Of the union? A. Yes, sir.

Q. And that was in '41 or '42, wasn't it?

A. Yes; just around shortly after Pearl Harbor, when we started getting bad overloads.

The Court: By "lunch hour" you mean lunch half hour?

The Witness: Lunch half hour; yes, sir.

Q. By Sanders: You state that you would have [24] pressures 15 minutes or so sometimes during the shift. Will you explain that a little more to us?

A. It just so happens occasionally you would have all your generators charged, and you might have a free period then where you did not have to recharge for 15 or 20 minutes. 15 minutes was about the maximum in the way we were setting our machines. And then, of course, you just stood by and watched your equipment.

Q. Did you let the men smoke in the plants there? A. No, sir.

Q. They could not smoke at all?

A. Absolutely not; in fact the law distinctly says you can't smoke within 75 feet, but we broke that rule by letting them smoke outside the wall.

Q. You mean you would let the men go out and smoke during the shift? A. Yes, sir.

(Testimony of James S. Yates.)

Q. Did all of the men eat their lunches in the plant, or did some of them go out in front of the plant some place to eat?

A. Oh, a man might walk out to get a sandwich or cigarette at our booth we had in front of the plant to smoke in, and might drop out for a smoke and eat a sandwich. We didn't all eat out there at the bench.

Q. I believe you stated that the gauges were all up on [25] a platform, consolidated so that you could see them yourself?

A. Yes, sir.

Q. Could your one man see all the gauges?

A. Well, no; one man on each side of the plant. We had a double plant. You couldn't see from one end of the plant to the other. We had a battery in the north and a battery in the south.

Q. And the gauges were not consolidated?

A. No. You could just see one battery at a time.

Q. And there was another man up there?

A. Another man had to be on the other side.

Q. Was it necessary to watch the gauges when the plant was shut down during the lunch period?

A. Yes; that was the most important time.

Q. During these pressures you speak about you still had two men?

A. Yes; direct orders from Mr. Kell and Mr. Alcott, both, at all times to be at least two men on the watch.

Q. You were paid by the week down there, were you not?

(Testimony of James S. Yates.)

A. No, sir; by the hour. Paid weekly, yes.

Q. You got a check every week? A. Yes.

Q. And that check, if you recall, had a stub on it, did it not? A. Yes. [26]

Q. It showed the hours you were paid for, over-time hours, if any, you were paid for?

A. Yes, sir.

Q. You do not recall ever being paid for lunch period time, do you?

A. No, sir; never was paid for.

Q. If you had been, you would have known it on each pay day; it would have shown up there?

A. Yes; I would have had another half hour.

Q. This lunch period situation you have testified to persisted throughout your employment down there, did it not? A. Yes, sir.

Q. From 1941 to 1945? A. Yes, sir.

Q. At the time you were performing these duties, Mr. Yates, is it not true that you understood that lunch period time you were not going to be paid for by your employer?

A. Yes; I understood that. We did that because we had the gas to get out and we needed to do the work; and it was just one of those things when the war comes along you had to get the gas out, and we got it out.

Q. You said you were never relieved from your duties for lunch to eat your lunch, you were a light eater. In fact, you never asked for any relief during the lunch period?

A. Couldn't have got it.

(Testimony of James S. Yates.)

Q. What? [27] A. Nobody to relieve us.

Q. In other words, you thought you should keep on working through the 30-minute lunch period whenever you took it, because the job needed it?

A. The job needed it. We were short-handed all the time. It was impossible to give relief because we didn't have enough men at any time.

Q. And the men in your crew, as to eating, did you have any designated time or make any kind of arrangements when a man could take some time off to eat his sandwich?

A. No; each fellow used his own judgment. If a man was hungry, he opened his lunch box, took out a sandwich and started to eat it.

Q. You could eat any time you wanted, practically? A. Any time you wanted to.

Q. Did you tell the men under you that they were going to get paid for their lunch period?

A. No, sir. They knew that the work had to be done regardless of what the shipyard paid us. In fact, we used to look forward to the lunch hour to catch up on things, you know, and get necessary work done.

Q. What was the union down there, Mr. Yates?

A. Operating engineers.

Q. They were a signatory to the collective bargaining agreement, were they not? [28]

A. Yes, sir.

Q. And they held regular union meetings, did they not? A. Yes, sir.

(Testimony of James S. Yates.)

Q. How often, do you know?

A. Well, every other week, every second week.

Q. Did you attend those meetings?

A. Periodically.

Q. As to yourself, Mr. Yates, on this lunch period claim you are now making did you ever make an actual complaint for pay for the lunch period prior to the filing of this action, with your employer?

Mr. Bertram: Just a moment at this point. If the court please, I have not objected to the line of questioning designed to establish, I presume, a waiver or an estoppel. The law is very clear that in this type of an action there can be no waiver or estoppel of the employee in his claim for the wages required to be paid by the Fair Labor Standards Act by reason of continuing to work and not receiving overtime, or continuing to work and not receiving overtime and failing to make a complaint. So any testimony as to whether or not complaints were made or whether or not the employees continued to work under these conditions would not be material to the action. On that ground we object.

The Court: This is cross examination.

Mr. Bertram: Yes, your Honor. [29]

The Court: There is a possibility of materiality apart from the question of waiver, I take it. There is no contention of waiver here?

Mr. Sanders: That is not my purpose, your Honor. My purpose is to show—

(Testimony of James S. Yates.)

The Court: Objection overruled.

Mr. Sanders: —construction of the contract they were performing on both sides, which is in issue before the court.

The Court: The objection is overruled.

Mr. Sanders: Will the reporter please read the question, or did you understand the question?

The Witness: I would like to have it read.

The Court: Read it, Mr. Reporter.

(Question read by the reporter.)

A. No, sir.

Q. By Mr. Sanders: Were there any union stewards in the acetylene or oxygen plants?

A. Yes, sir. I happened to be one, myself, for a year.

Q. And what year was that?

A. I think that was in '42. Then they made me—they called me off of being a shop steward because I was also the superintendent or working foreman.

Q. Who were the stewards from 1943 on, if you recall?

A. The fellow that had the steam crane which they used before they had the boiler plant. He was chief shop steward. [30] I can't think of his name now.

Q. Is he a plaintiff in this case, do you know?

A. No, sir; not that I know of, at least.

Q. As I understand it, you supervised all three shifts did you not? A. Yes, sir.

Q. You normally were on the day shift all the time?

(Testimony of James S. Yates.)

A. The day shift was supposed to be my shift.

Q. But you would work on the swing some of the time?

A. Mr. Kell made a rule early in 1943, I believe, that on any shift, when they were short, the man from the day shift stayed over. The swing shift came in after the day. Any man short on the swing shift was replaced by a man from the day shift on a similar job. In other words, if the swing shift chief operator didn't come in, I had to work there and take his job. That was the close, hard and fast rule, the equivalent man from the day shift had to stay over.

Q. Are you acquainted or were you acquainted, rather, in your capacity as foreman of these plants with the procedure for authorizing overtime, over and above the regular shift work?

A. The fact is with Mr. Kell I didn't even have to say anything about it, just my next day's report: I worked so and so overtime a half day on the next shift, just notations. Our timekeepers knew that. [31]

Q. Did you have authority to work any of your men over and above the regular shift hours?

A. The only authority I had was under Mr. Kell, Mr. Kell's orders, in carrying out his orders; in other words, to have a man work over if we were short a man on the oncoming shift. That was his authority and I carried it out.

Q. Who was this union agent that told you—

(Testimony of James S. Yates.)

what was it, 1941 or '42—to work the men during the regular shipyard lunch period?

A. Mickey McDonald.

Q. Where was that, at a union meeting?

A. No; he come out to the yard.

Q. Did he give you any instructions as to when you were to let the men eat lunch? A. No, sir.

Q. He left that to your judgment?

The Court: Your answer?

A. Yes, sir.

Q. By Mr. Sanders: Did you ever give any of your men under you orders that they could not take 30 minutes for lunch period?

A. Well, sir, it never came up. It was just taken for granted you eat when you could. That was standard from the start of the plant, what you say, a plant custom, you know. I don't think there was very much question ever raised about [32] it.

Q. How often would these 15-minute pressure periods occur, just maybe once a week you would have one, or just every day?

A. Oh, you would get a pressure every shift sometime or other unless you were just absolutely running ordinary capacity all the time, which didn't happen some days when the shipyard was going extra heavy. You see, there is 12 generators and we were running them out in 15 minutes; so you can figure there would just be an occasional 15-minute break on that basis of operation.

Q. When you normally, you say, would eat your lunch on this platform? A. Yes.

(Testimony of James S. Yates.)

Q. In the acetylene plant?

A. Yes. That is in the plant before the explosion. After the explosion we had a different setup. We had a control board then. It was a different make of equipment, in which I could look at the control board and get all my pressures without looking at the machine, because each machine registered on the control board the rate of speed, the gas pressure gauge and how near empty it was.

Q. You could have gone outside to eat your lunch if you wanted to, could you?

A. No; not at the noon hour. I was too afraid of explosions. [33]

Q. Outside of the regular shift hours?

A. Oh, yes. I would break myself out to take a smoke, too. A man can't stay 25 hours around a machine. If you wanted to get out and get some air, you could.

Q. Did you give orders that the other men could not go outside to eat their lunch?

A. No. The only understanding we had, if a man was going to take a smoke he would holler over to me or whoever was running the other generator, the engineer in charge, "I am going out for a smoke."

Q. Did it work out, as you recall, that the men would eat at different times each day, or did they more or less work into a regular time to have their lunch?

A. No; very irregular.

Mr. Bertram: What was that answer, please?

(Answer read by the reporter.)

(Testimony of James S. Yates.)

The Witness: I said the time of eating was very irregular.

Q. When you were hired by Calship, Mr. Yates, you were told what the working hours were and what the lunch period would consist of, were you not?

A. Well, they told me an eight-hour day at such and such scale.

Q. They told you about the lunch period, didn't they? A. No; they never brought that up.

Q. You knew about it, though? [34]

A. I knew any gas plant is a continuous operation, a big plant like that, and any gas man knows he is going to have an awful hard time getting a lunch hour in anywhere as a certain hour. You are working from the time you start until you finish. The element of danger is such there you can't afford to take a chance and walk off on it. It is your neck that is going to go first, and you are right in there.

Q. After you had worked there for several months and received your weekly pay checks, you know that no pay was being paid for the lunch period? A. Yes, sir.

Mr. Sanders: No further questions.

Redirect Examination

By Mr. Bertram:

Q. Mr. Yates, you mentioned the name of Mr. Kell. Who is Mr. Kell or who was he?

A. Mr. Kell was the engineer in charge of maintenance, I think was his title, chief maintenance engineer.

(Testimony of James S. Yates.)

Q. That is Ed Kell, is it not?

A. Ed Kell, chief maintenance engineer; yes.

Q. And he was a superintendent over what portion of the yard?

A. He was of the oxygen plant, the acetylene plant, the compressor plant, the boiler room, the construction electricians, the maintenance electricians, and the oilers, [35] the apprentice oilers, he had Mr. Hill. I was under Hill. Hill was under Kell, and two or three other odds and ends.

Q. Did you receive any express instructions from Mr. Kell as to the operation of the acetylene or oxygen plants during noon hours?

A. Yes, sir; keep on the job. We knew before the last explosion, we knew for five weeks, that is, Mr. Kell and I alone knew, I tore down one of the machines because we had a light explosion on it. That was on a Sunday, and took the equipment down to Mr. Kell and showed him. I said, "We are due for a good one." He said, "Then, tear all of your machines down every Sunday, one after another and see if we can avoid it." And he said, "Stick right on the job, and how."

Q. Did he give you any instructions with respect to the work during the lunch period of the men under you?

A. Yes. He told us to stand by. Also, Mr. Dick Lidicott come down on several occasions.

Q. I was going to ask you who Mr. Lidicott is.

A. Mr. Lidicott was one of Mr. Kell's assistants.

(Testimony of James S. Yates.)

Q. He was immediately over you, was he?

A. Immediately over me; yes, sir.

Q. What were his instructions to you, if any?

A. To stick right in that plant through the noon hour. In fact, he used to come down a couple of noon hours to see if we were in the plant. [36]

Q. Mr. Yates, did you know a man by the name of Thomas C. Mills who was employed at Calship?

A. Yes, sir.

Q. In what capacity was he employed there?

A. I think he worked primarily in the compressor plant, first, and then I think, later on, he relieved on the steam pipe boiler plant.

Q. Do you know whether or not he was a member of the same union in which you were a member?

A. Yes, sir; he was a member of the operating engineers.

Q. Do you know whether or not his employment was governed by the same contract which governed your employment?

A. Yes, sir; identical.

Q. Did you say that he also worked in the oxygen plant?

A. No, sir. Mr. Mills never worked under me.

Q. Did he work in the acetylene plant?

A. No, sir. I think he worked in the compressor plant, though, and the boiler room. I am not so positive about the boiler room.

Q. In cross examination you said that you and the men under you on occasion could leave the plant, step outside and, you said, have a smoke; and Mr.

(Testimony of James S. Yates.)

Sanders asked you whether or not you could do that for lunch. Did you ever step outside the room to eat your lunch?

A. Oh, I guess on a summer day I have eaten a sandwich [37] out in front. I wouldn't remember offhand.

Q. How long could you remain outside of that plant at any one time?

A. Well, a man would either go to the "head" or take a cigarette. That is about the time we allowed them. So, roughly speaking, a man could break out for a cigarette and be gone, say, five minutes.

Q. Were any provisions made to relieve either yourself or any of the men working under you for a full half hour lunch period? A. No, sir.

Q. For a definite lunch period of a given duration?

A. No, sir. We didn't have any at all. We had no relief whatsoever because we didn't have enough men to handle a relief.

Q. Did Mr. Foley work under your jurisdiction?

A. No, sir. Mr. Foley worked at the compressor plant.

Q. And Mr. Moreno?

A. Mr. Moreno worked for me.

Q. Were his conditions of employment substantially the same as yours with respect to lunch periods? A. Yes, sir.

Mr. Bertram: That is all, Mr. Yates.

(Testimony of James S. Yates.)

Recross Examination

By Mr. Sanders:

Q. Mr. Kell, as I understand it, told you to keep a [37-A] full crew there during the regular shipyard lunch period? A. Yes, sir.

Q. He did not tell you you were not to eat your lunch at some other time during the shift, did he?

A. To the best of my knowledge, I don't think I have ever had a conversation whatsoever with Mr. Kell as to the lunch hour, as to the best of my knowledge.

Q. That was not discussed; he just wanted you to keep a full crew there?

A. Yes, sir, regardless.

Q. Well, let me summarize it. Mr. Kell's orders were, then, that during the regular shipyard lunch period he wanted you to be sure and have the full crew there? A. Yes, sir. [38]

* * *

MARTIN MORENO

a plaintiff herein, called as a witness by plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Martin Moreno.

Direct Examination

By Mr. Bertram:

Q. Mr. Moreno, in the questions I am about to ask you, as with the other men, I am asking with

(Testimony of Martin Moreno.)

reference to the period following October 18, 1943, and I want you to direct your answers to that period of time while you were employed by California Shipbuilding Corporation. What was your job at that shipyard?

A. Well, I was a general utility man.

Q. Will you keep your voice up so that we can hear you this far away?

A. Yes. A general utility man.

Q. What duties did you perform?

A. I was an operator engineer.

Q. And where did you perform those duties, Mr. Moreno?

A. Well, different places in the yard, especially in the acetylene plant is where I put in about two years, a little over two years there.

Q. Was that after October of 1943 in the acetylene plant? A. I believe so. [58]

Q. Did you work under Mr. Yates?

A. Yes.

Q. What shift did you work on?

A. I was on swing shift.

Q. Can you describe your duties for us while you worked in the acetylene plant?

A. Well, there were 12 generators, you know, six on each side. They had one man on one side and I was tending to the other six.

Q. Each man was in charge of six of those 12 generators? A. Yes.

Q. What did you do while in charge of the generators?

(Testimony of Martin Moreno.)

A. I was operating the six generators.

Q. Can you tell us what that requires you to do? How did you operate six generators?

A. Well, it is all mechanical. It is run by carbide and you would have to maintain the carbide in it. For instance, 500 pounds of carbide would generate four and one-half cubic feet of gas, and each generator was putting out about 12,000 cubic feet an hour.

Q. So, then, I take it you assisted in loading carbide into the generators?

A. No. When we operate the generators that is opening them up and flushing them out after the 500 pounds of carbide would be over. [59]

Q. Did you have gauges on the generators to tell you when the gas pressure has reached the desired force? A. Yes.

Q. When that happens what do you do? What did you do?

A. Well, I didn't understand that. Did you say that when the generator would be out; is that what you are referring to?

Q. Yes.

A. Yes. There was on each generator, there was sort of a squeal as a danger point, see, and it was dangerous.

Q. Well, let me ask you this, Mr. Moreno: Were there any periods of time during your shift where you could leave the generators unattended?

A. No; not during my shift nor no other shift, I don't believe.

(Testimony of Martin Moreno.)

Q. Were you relieved of your duties for the purpose of taking lunch at any time during your shift?

A. No.

Q. Did you have any lunch period assigned to you, Mr. Moreno?

A. Well, we did, we did; and during that time we had to stand by and watch our gauges.

Q. You understood that there was a definitely scheduled lunch period for all of the employees in the yard; you knew that, didn't you? [60]

A. Well, yes.

Q. Were you able to take that lunch period off from your duties for the purpose of eating lunch?

A. No, no; you couldn't, you couldn't.

Q. Were you given any other time during the shift in which you had no duties to perform, in which you could eat your lunch? A. No.

Q. Did you take a lunch to work with you, Mr. Moreno? A. Yes, sir.

Q. And did you eat it on the job?

A. On the job.

Q. Will you describe the manner in which you ate your lunch during your shift?

A. Well, I recall several times, many times, we just had to go back and forth, that is during the lunch period, the so-called lunch period, because during that period that was the dangerous point, the dangerous time.

Q. Why was that?

A. Because the gas inside the generator would build up.

(Testimony of Martin Moreno.)

Q. And were there other times during the shift where you could take a half hour off for lunch?

A. No.

Q. What sort of duties did you perform during the lunch period that was assigned to the other employees of the yard? [61]

A. Well, we had to do a little maintenance work there, too, back and forth.

Q. Did you continue to generate gas during the lunch period?

A. Well, you see, there were, like I stated, there were two men, one on each side, see; so we would just run back and forth. One guy would run down. It was a madhouse.

Q. Let me ask you this, Mr. Moreno: Were you ever able to finish your lunch at one sitting, from the time you started it to the time you ended it, without being interrupted by some duties?

A. No.

Q. I take it by that you mean you ate your lunch piece-meal during the shift?

A. No, sir. No. I beg your pardon. I watched the generator and I had a sandwich in one hand and checking the gauge with the other, see.

Q. Did you ever receive any instructions from anybody in authority over you as to the manner in which you could take your lunch? A. No.

Mr. Sanders: What was that answer?

(Answer read by the reporter.)

(Testimony of Martin Moreno.)

Q. By Mr. Bertram: Were you ever paid for half hour lunch period? [62] A. No.

Q. Were your duties any different during the half hour lunch period assigned to the other employees in the yard than they were during the rest of your shift?

A. Well, we had our duties to do in the acetylene plant, and that was our job there.

Mr. Bertram: You may cross examine.

Cross Examination

By Mr. Sanders:

Q. Where did you eat your lunch?

A. Well, I ate my lunch in the acetylene plant.

Q. In the summertime you ate outside, possibly?

A. Well, you couldn't.

Q. You said you could not?

A. You could not.

Q. Why couldn't you?

A. An operator had to take care of those generators during the lunch period.

Q. You ate your lunch every day, Mr. Moreno?

A. Why, sure, on the job.

Q. Did anybody tell you you could not have eaten outside of the acetylene plant if you wanted to?

A. Well, supposing I did go outside, those generators would blow up. There was the biggest possibility there.

Q. I do not believe you understood my question. My [63] question was: Did anybody tell you, Mr.

(Testimony of Martin Moreno.)

Moreno, over you, that you could not go outside the acetylene plant to eat your lunch?

A. I don't think so.

Q. You do not understand the question?

The Witness: No. Will you repeat that again, please?

The Court: Please read it, Mr. Reporter.

(Question read by the reporter.)

A. No.

Q. (By Mr. Sanders): You stated on direct examination, Mr. Moreno, that you were assigned a lunch period. Now, my question is: What period was that that you were assigned for lunch?

A. Well, at any time, I guess.

Q. Who assigned that to you?

A. Mr. Yates, I guess.

Q. How many were there in the acetylene plant on your shift?

A. There was about three men, I guess.

Q. Whereabouts in the acetylene plant would you eat your lunch, down at the desk?

A. Well, no; around the generators; sometimes at the desk.

Q. Were you told by anyone, Mr. Moreno, that you could not take 30 minutes for your lunch period? [64]

A. No.

Q. But you were told that all of the hands in your crew were to be in the plant, working during the regular shipyard lunch period, isn't that right?

A. Yes.

(Testimony of Martin Moreno.)

Q. That was the dangerous period?

A. Yes.

Q. That 30 minutes?

A. Yes. We had to—well, I will tell you. Mr. Yates, he was acting chief engineer there at the plant, and we had to do maintenance work, too.

Q. So you would have your lunch either before or after the regular shipyard lunch period?

A. Well, in between.

Q. But you could not during the regular shipyard lunch period?

A. No. Any hour when we had time. Sometimes I would not eat at all, couldn't. That was a dangerous job.

Q. You say some days you would eat no lunch at all? A. That is right.

Q. Because you were not hungry?

A. No; there was too much to do.

Q. You mean somebody told you: "Moreno, you can't take time off to eat your lunch today"?

A. Well, you see, we had several fires out in the yard, [65] too, you know. We had to——

Q. No. My question, Mr. Moreno: Did Mr. Yates or any of your lead men or foremen ever tell you: "Now, Moreno, today you can't eat your lunch"?

A. Yes.

Q. Who was that, Mr. Yates?

A. Well, Yates and them did tell us not to eat our lunch. We had to divide our time in there.

Q. Well, who was it that told you that, Mr. Moreno?

(Testimony of Martin Moreno.)

A. Well, nobody told us that we couldn't eat.

Q. Nobody told you that?

A. But we had to do our job and eat at the same time mostly.

Q. Did you attend your union meetings?

A. Yes.

Q. Was there any discussion there of the fact that you thought you were not getting enough time to eat your lunch?

A. Well, you see, that was during the war times and there was—I think there was over 60,000 people working there in the shipyard, and it was difficult for the unions to go into such matters sometimes.

Mr. Sanders: I move to strike all of his answer as not responsive to the question, your Honor.

Mr. Bertram: Your Honor, I believe it is responsive. In his own way he answers that question to the best of his [66] ability.

The Court: Motion denied. You may press for a further answer if you desire.

Q. By Mr. Sanders: You attended your union meetings? A. Yes.

Q. What did you do about this lunch period, if anything?

A. Well, we didn't bring that up because I really believed it was like a duty that I had to perform. That was during the war. Nobody to talk to.

Q. You had stewards, union stewards in your acetylene plant?

A. Yes; but they were awful busy. You call one

(Testimony of Martin Moreno.)

down and you wouldn't see him for two months sometimes. They were pretty busy.

Q. When you were eating your lunch, Mr. Moreno, as I understand it, you would watch the gauges? A. Yes.

Q. And during the balance of your shift you were working on these generators?

A. Well, yes; in between, all kinds of work.

Mr. Sanders: No further questions.

Mr. Bertram: That is all, Mr. Moreno.

The Witness: All right. [67]

* * *

EDWARD R. BIGGS

one of the plaintiffs herein, called as a witness by plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Edward R. Biggs.

Direct Examination

By Mr. Bertram:

Q. Mr. Biggs, following October, 1943 what was your job at the shipyard of California Shipbuilding Corporation? [68]

A. I was classified as sub-foreman in the warehouse 2.

Q. What were your duties as sub-foreman?

A. I was in charge of the parts department at the warehouse.

(Testimony of Edward R. Biggs.)

Q. Was that parts department located in a warehouse?
A. That is right.

Q. And how many men did you have working under you?

A. It averaged from 12 to 15 I would say.

Q. What were the nature of your duties, Mr. Biggs?

A. Supervising them and issuing orders and okaying authorized signatures, checking signatures to see that they were authorized.

Q. That is with respect to requisitions for parts out of your warehouse?
A. That is right.

Q. Mr. Biggs, will you try to keep your voice up so we can hear you? What are you claiming in this action, Mr. Biggs?

A. Lunch period, a half hour lunch period.

Q. Did you perform duties during the half hour lunch period that was assigned to the other employees of the yard?
A. Yes, sir.

Q. What duties did you perform?

A. Issue parts, make out the requisitions for the parts, [69] and also search for the parts. That was the first procedure.

Q. Were those also some of the duties that you performed during the regular portion of your shift?

A. That is right.

Q. Mr. Biggs, were you assigned any other period during the shift in which to eat your lunch?

A. No, sir.

Q. At any time during your shift were you

(Testimony of Edward R. Biggs.)

relieved of your duties for the purpose of taking your lunch? A. No, sir.

Q. During the lunch period did the employees who were under your supervision remain on the job along with you?

A. That was during the lunch period, you say?

Q. Yes. A. No; they didn't.

Q. Were you alone in charge of the parts department and manning the parts department during the lunch period?

A. Oh, occasionally one of the employees would be there, two or three of them sitting around, maybe, on cartons or boxes, wherever they could sit down there.

Q. What were the occasions for you performing duties during that lunch period while the other men in your department were off duty?

A. I was in charge of the department and was responsible that the authorized people would be in the department, and that [70] requires that we watch to see that nothing be taken out but what was supposed to be taken out, without requisition.

Q. Did any of the employees in the yard come to the parts department during the lunch period in order to obtain parts? A. Yes, sir.

Q. Did you bring lunch to work with you, Mr. Biggs? A. Yes.

Q. Did you generally eat it on the job?

A. Yes.

Q. Will you describe the way in which you ate your lunch?

(Testimony of Edward R. Biggs.)

A. I had a small box there in one corner of the warehouse, the parts department there. I had a desk. I usually started to eat my lunch and I never did get a complete lunch eaten at one sitting. In other words, I would eat a sandwich, someone would come in or there would be a phone call or I would have to go hunt for a part, because there were certain employees in the yard, maintenance men there that came in at that time to get the parts.

Q. Can you at this time recall any occasions, Mr. Biggs, in which you were able to eat your lunch uninterrupted by some duties? A. No.

Q. Did you receive any instructions from anybody in authority over you with respect to your taking time off for lunch? [71]

A. I didn't quite understand the question.

Mr. Bertram: Would you read it, Mr. Reporter? If it is not clear, I will reframe it.

(Question read by the reporter.)

Mr. Bertram: Is that question clear? If not, I will reframe it.

The Witness: I don't believe I quite get what you mean.

Q. Who was over you? A. Mr. Blackert.

Q. Did you ever have any discussion with him regarding your taking your lunch or regarding your working during your lunch period, either one?

A. My instructions were that I had to be there in the department at all times.

Q. Did Mr. Blackert give you those instructions? A. That is right.

(Testimony of Edward R. Biggs.)

Q. When was that?

The Court: You were told you could never leave the warehouse?

The Witness: Not exactly you couldn't leave the warehouse, but at the lunch hour I was the only one that was really there at the time.

The Court: Did your superior tell you to stay there during the lunch hour every day?

The Witness: He made it clear that I was not supposed to [72] leave.

The Court: What did he say?

The Witness: Well, he said, "You are responsible." When I first went in the department I didn't have so many employees at that time, but he said, "You are responsible for this department and to watch it at all times."

Q. (By Mr. Sanders): Did you ever ask anybody in authority over you whether you could take 30 minutes off for lunch like the other employees did? A. No.

Q. Did you ever have any conversation with anybody in authority over you with regard to that at all? A. No.

Q. Were you ever paid for the half hour lunch period? A. No, sir.

Q. During the time that you were eating your lunch were there occasions to answer the phone?

A. Yes, sir.

Q. And what sort of phone calls would be made to you, for what purpose?

(Testimony of Edward R. Biggs.)

A. Somebody in the yard would be calling to see if we had a certain part for a certain piece of equipment.

Q. Was that phone on your desk where you were eating your lunch?

A. That is right. I would have to go to that section [73] to see if we had that particular part and then go back and answer on the phone again.

Q. What would happen if somebody came to the counter to requisition a part while you were eating your sandwich?

A. We would wait on them.

Q. And leave your lunch?

A. That is right.

Mr. Bertram: You may cross-examine.

Cross-Examination

By Mr. Sanders:

Q. You were a sub-foreman during this period from October, 1943 up to your termination, is that right, Mr. Biggs? A. That is right.

Q. And you had approximately 12 to 15 men under you all that time?

A. Approximately, yes.

Q. You are only claiming for the lunch period in this action?

A. That is all. I got paid for that other period.

Q. You are claiming the lunch period for each and every day of your employment since October, 1943, is that right? A. That is right.

Mr. Bertram: Mr. Biggs, I can hardly hear

(Testimony of Edward R. Biggs.)

you even from here. Will you try to speak a little louder?

The Witness: All right. [74]

Q. (By Mr. Sanders): I believe you stated your lunch was interrupted every day?

A. That is right.

Q. Some way or another. When was it Mr. Blackert told you you were responsible for your department at all times?

A. When I started on the swing shift.

Q. Well, when would that be, approximately?

A. It was in February, 1943 or approximately around in there.

The Court: You did work the swing shift?

A. That is right.

Q. All during this period you are telling about?

The Witness: That is right.

Q. (By Mr. Sanders): Refreshing your recollection, Mr. Biggs, your records, company records, show you were on the swing shift after October, 1943 on?

A. I could be wrong about that on those dates.

Q. But you recall it was at the time you went on the swing shift.

A. That is right.

The Court: Do you know whether these people who came in and disturbed you every day to get parts claimed overtime for the time they spent in disturbing you?

The Witness: I believe there was some employees that might have been on a different lunch hour. I am not sure as to that. [75]

(Testimony of Edward R. Biggs.)

The Court: The entire plant did not have the same lunch period?

The Witness: There might have been a few maintenance men that had a different lunch period.

Mr. Sanders: I did not get that.

(Last part of record read by the reporter.)

Q. You had authority to stagger the lunch period of the men under you if you had wanted to do so, didn't you? A. I never did.

Q. But you could have done it?

A. I could have; yes, sir.

Q. And you could have had some men working during the regular shipyard lunch period to service these men at that time, couldn't you?

A. I don't get just what you mean.

Q. You had to give service in your department, the parts department, at all times throughout the shift, as I understand it? A. That is right.

Q. And the demands were very light during the regular shipyard lunch period; you figured you could handle it by yourself and let all 12 or 15 men off, is that right?

A. I handled it by myself, yes. Nobody else ever worked during the lunch hour that I recall.

Q. You did not want to ask them to? [76]

A. I never did.

Q. Blackert did not tell you that you could not take 30 minutes off for lunch, did he?

A. Not in those words; no.

Q. In fact there were no instructions given to

(Testimony of Edward R. Biggs.)

you as to when to take your lunch period, were there? A. No.

Q. Speaking of yourself now, not your crew?

A. No.

Q. You recall my taking your deposition in April, 1947, don't you, Mr. Biggs? A. Yes.

Q. Well, I want to read a portion of that to you and refresh your recollection on these days that you claim you were always interrupted during your lunch.

The Court: I would suggest you put the document in front of the witness and let him read it first, and then you may put your question for the record.

Mr. Sanders: May I have the original?

Q. Will you read page 13, commencing with the question on line 13 of your deposition, to and including your answer on page 14, line 5?

The Witness: Do you want me to read it out loud?

The Court: Read it to yourself first and then counsel will ask you a question with respect to it.

The Witness: This question 13?

(Mr. Sanders indicating to witness in transcript.)

Q. (By Mr. Sanders): Does that refresh your recollection, Mr. Biggs, that there were days, more than once a week, when you would have no interruptions at all during your lunch period?

A. Well, there was days, naturally, to be fair about it. There was a day once in a while, maybe,

(Testimony of Edward R. Biggs.)

nobody would come in, but it was so rare that I was interrupted practically every day by either a phone call or a customer coming in to be waited on.

Q. When I asked you in your deposition, your answer was, on page 14: "Oh, it would be more than once a week, I would say, to be fair about it," that you would not be interrupted. And is that still the situation, or do you think it was maybe only once a month now?

A. No; I wouldn't change it any.

Q. Well, how often would you say that you would have your lunch period to yourself?

The Court: He said he would not change it; once a week.

Mr. Sanders: More than once a week was his answer. Now I am asking him to give a better estimate if he can, your Honor.

A. Well, it is pretty hard to say. As long as it was "more than once a week," maybe twice a week. It is more, I guess, than anything else. I didn't keep no permanent record [78] on it.

Q. What were your duties other than during this lunch period; what work did you do?

A. I was supervising employees, seeing that they put the stock away. We were in the process of making a catalog and their merchandise had to be out on the shelves according to the catalog. They were helping to do that, too, along with issuing the parts.

Q. Did you issue the parts during other than the regular lunch period?

A. Yes, sir.

(Testimony of Edward R. Biggs.)

Q. You did not have any of these men under you doing that work? A. Yes.

Q. How many?

A. Oh, I should say six to eight of them probably.

Q. How many?

A. Six to eight. Any of the employees could issue the parts, though, if I told them to do it.

Q. You would help in case you got real busy, is that the idea? A. Yes.

Q. And mainly, your job other than the lunch period was supervising these men and cataloging and putting the parts away, etc.? [79]

A. Yes.

Q. You did not do any supervision work during the lunch period, did you? A. No, sir.

Q. Did you ever make any objections to anyone above you that you were not being given your lunch period, Mr. Biggs; that you were required to work during your lunch period? A. No, sir.

Q. Did you ever file any objections with your union or see your union steward about that matter?

A. I don't recall ever seeing a union steward.

Q. Were you a member of the union?

A. Yes, sir.

Q. You had meetings? A. Yes, sir.

Q. While you were employed down there?

A. Yes, sir.

Q. You knew there was a union contract with Calship, didn't you? A. Yes, sir.

(Testimony of Edward R. Biggs.)

Q. But you did not know they had stewards in the yard?

A. No; I didn't see them. I knew there were stewards in the yard, yes; but I never did see one.

Q. You never did look one up? A. No.

Q. Isn't it true that in some of these spare parts places in the shipyard the foreman would split his shift up for the lunch period?

A. Do you mean in the——

Q. For—have a portion of the crew eat a half hour before the lunch period and part of the crew eat at the regular period?

A. I never heard of that in that warehouse.

Q. You never heard of that?

A. In that warehouse.

Q. As I understand it, you felt that you were responsible to stay on the premises there or in the warehouse during the lunch period because you were foreman? A. That is right.

Q. And because Blackert said, "On this shift you are in charge of the whole area here"?

A. That is right.

Mr. Bertram: What was the answer?

The Witness: "Right".

Q. (By Mr. Sanders): Now, I will ask you, Mr. Biggs, if Mr. Blackert did not tell you, did he: "Mr. Biggs, you are not to leave this area during your lunch period"?

A. Not in those words. He said at all times to be in the department.

(Testimony of Edward R. Biggs.)

Q. That you were in charge and responsible at all times? [81] A. That is right.

Mr. Sanders: No further questions.

Redirect Examination

By Mr. Bertram:

Q. Mr. Biggs, did you have any authority to leave the parts department in charge of one of the employees under you while you were off for a half hour?

A. I had a man that could take over, yes.

Q. Did you ever do that? A. Yes.

Q. On how many occasions did you do that?

A. Oh, I don't know how many. I wouldn't say as to that.

Q. Was that for the purpose of you taking your lunch for a half hour? A. No, sir.

Q. What was the purpose of it?

A. I might run over to the electrical department or some other department that would call me on some part, maybe, and I would go over to check. They had some piece of machinery broken down, they couldn't exactly tell you what they wanted, but if you went over and saw the part and come back, you could find it much easier.

Q. In other words, if you were summoned out of your department by someone else, then you could leave it in charge [82] of your assistant?

A. That is right.

Q. Did you have any way of knowing as the lunch period began and you arranged for your

(Testimony of Edward R. Biggs.)

Q. Lunch whether or not there would be one or a dozen or no interruptions during that lunch period?

A. No.

Q. You were available there for whatever came up?

A. That is right.

Mr. Bertram: That is all, Mr. Biggs.

Recross-Examination

By Mr. Sanders:

Q. The other men in your crew, it is true some of them would eat lunch there in your office with you, wouldn't they?

A. Yes.

Q. And it is true that sometimes during the lunch period they would help you issue parts if you were rushed?

A. Yes; on occasion.

Mr. Sanders: No further questions.

The Court: You may step down, Mr. Biggs.

Mr. Bertram: Mr. Hector.

JOHN R. HECTOR

one of the plaintiffs herein, called as a witness by plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: Please state your name. [83]

The Witness: John Richard Hector.

Direct Examination

By Mr. Bertram:

Q. Mr. Hector, in October of 1943 and following

(Testimony of John R. Hector.)

that time what was your job at the shipyard of California Shipbuilding Corporation?

A. Maintenance foreman.

Q. What were your duties as maintenance foreman?

A. We had charge of all the upkeep of the yard, oxygen, acetylene, air and water.

Q. When you say you had charge of that type of equipment what did you actually do with it?

A. We had to repair all this equipment. Some of it was stationary and some of it could be moved around, and the stationary equipment had to be repaired when the yard was down, like during the lunch period.

Q. Did you have supervision over any of your employees in your department?

A. Yes. My employees ranged from six to fourteen, I believe, somewhere in that capacity.

Q. On what shift? A. Graveyard.

Q. Was that during the entire time after October 18, 1943? A. Yes. [84]

Q. What are you claiming in this action, Mr. Hector?

A. The half hour lunch period, and there was a time when they paid us for coming in early and going home late to make the exchange with the on-coming and outgoing foreman, and they paid us for that for a while but for a while they did not. So, if there is any of that left.

Q. So you are also making a claim for that time?

Testimony of John R. Hector.)

A. They can look it up in the records of Cal-hip.

Q. Referring to the lunch period, Mr. Hector, you performed duties for your employer during the lunch period that was regularly assigned to the other employees in the yard? A. Yes.

Q. What duties did you perform?

A. Well, we had emergency repairing mostly.

Q. Emergency repair of what?

A. On the hose, oxygen, acetylene hose, and the air hose and water hose.

Q. Do you do that repair work at a fixed place in the yard, or were you wandering all over the yard?

A. Well, we had a shop. A lot of it was stationary in the plate shop and pipe shop, copper shop, and all over the yard was stationary hose.

Q. So you would have to go to the place where the equipment was located in order to make the repairs, is that it? A. That is right. [85]

Q. Did you have such repair duties to perform every lunch period?

A. Mostly, practically every lunch period; yes.

Q. Were there some lunch periods that you worked there where you did not have any duties to perform?

A. Well, there might have been a few.

Q. At the times, Mr. Hector, when you had duties to perform during the regular lunch period were you given a lunch period at some other time during the shift? A. Well, no; not exactly.

(Testimony of John R. Hector.)

Q. Will you describe what the situation was?

A. Well, whenever the men had a chance to eat their lunch, they would eat their lunch, but generally at the lunch period we had most of the work. The work would pile up at the lunch period due to the fact that the yard was shut down and this stuff could be repaired.

Q. Were you ever relieved of your duties for a half hour either during the regular lunch period or at any other time during the shift for the purpose of eating your lunch?

A. No. There was no one to relieve me.

Q. When you say you started to eat your lunch, say there was a lull in your duties and you thought that you could eat your lunch, were you ever able to continue to eat your lunch until you had completed your lunch without being interrupted by duties? [86]

A. I didn't bring any lunch. I didn't eat any lunch.

Q. Was that a matter of your own choice?

A. That is right.

Q. And did you have any half hour period or any designated period of time assigned to you where you were free to do what ever you wanted without having to perform any duties?

A. Well, as a foreman, I believe you are on duty most of the time. There is very rarely a time that you are not doing something. If it is not physically, it is mentally. [87]

(Testimony of John R. Hector.)

Q. I believe you stated there would be some lunch periods that you would have nothing to do; isn't that right, Mr. Hector?

A. That is right, but we were always subject to call on account of the fire department. We had to follow the fire department whenever the fire department went out; and if there were any damage done anywhere, we had to go pick it up right away.

Q. You mean the fire department called you direct or somebody over you?

A. We had orders that whenever the fire department went out we were to follow them.

Q. Where were you then, right next to the fire department?

A. Not exactly. We was in the central tool room.

Q. What about the crew under you, then, they had to go [93] out, too?

A. That is right.

Q. Where did you permit them to eat their lunch? A. Wherever they could.

Q. Wherever they could?

A. That is right.

Q. Well, whereabouts in the area where you worked?

A. Yes; some of the men were on the ways, some were on the outfitting docks, and some were in the central tool room.

Q. And you would eat in those places, too?

A. I didn't eat lunch.

Q. What? A. I did not eat lunch.

(Testimony of John R. Hector.)

Q. Some of your men did not eat lunch, either, did they? A. Well, I guess not.

Q. Don't you remember?

A. I wouldn't say as to that; no.

Q. Some of the men on your crew did not take lunch, did they? A. I don't believe they did.

Q. They took their time off, didn't they?

A. Well, I wouldn't say as to that, either.

Q. You did not bother to check on that?

A. You couldn't be with all the men, you know.

The yard was quite big. [94]

Q. I am talking about the men in your crew.

A. Well, that is the men I think of. I had men on every way and outfitting dock.

Q. How many men did you have when you worked in those places where you worked?

A. I had two men in the shop.

Q. No, no.

A. Two in the shop. They were all under me.

Q. I mean you had two men in the shop where you worked?

A. I didn't work in the shop all the time.

Q. Where did you work?

A. I was out on the ship ways, plateshop, supervising work.

Q. You would go out and supervise the work during the shipyard lunch period? A. Right.

Q. Would the men take their lunch at that time?

A. No.

Q. You would let them eat later on?

A. Yes; if they could.

(Testimony of John R. Hector.)

Q. Did you ever tell them they could not take their lunch period? A. No.

Q. You were never given any orders to that effect where you? [95] A. No.

Q. Not to let the men eat?

A. No; not that they couldn't eat.

Q. You were never given any orders yourself, Mr. Hector, that you could not take your 30-minute lunch period, were you? A. No.

Q. Mr. Mowrey gave you some orders as to your lunch period, didn't he? A. Yes; he did.

Q. What were those orders?

A. Mr. Mowrey said any emergency work or any repair work that had to be done during lunch period, it had to be done.

Q. When did he give you that order?

A. I believe it was in 1940 on to the middle of 1943, somewhere.

Q. To the middle of 1943?

A. Somewhere after Mr. Mowrey took us over.

Q. Whereabouts was it he gave that order to you? A. In his central tool room.

Q. Who else was present?

A. Just himself and me.

Q. Whereabouts in the central tool room?

A. In our shop.

Q. By "our" do you mean your shop?

A. Yes. [96]

Q. Where *were* worked with the two men?

A. That is right.

(Testimony of John R. Hector.)

Q. Isn't it a fact, Mr. Hector, that he told you that on those occasions you were to take your lunch period later?

A. He says, "Take your lunch period if you can," yes.

Q. You mean he told you that if there was work to do, don't take time off for lunch?

A. If there is work to do, do it. We had the ship launching also, we had the equipment for the ship launching.

Q. Did Mr. Mowrey instruct you that you were not to take time off for lunch?

A. If there were emergency work; yes.

Q. By that, I mean not to get any time?

A. Mr. Mowrey didn't say that.

Q. He never said that at any time, did he?

A. No.

Q. Were you ever told by Mr. Mowrey or any of the other superiors that you were going to be paid for lunch period time? A. No.

Q. Or any of the men in your crew?

A. No.

Q. Who was the union steward in your crew?

A. I don't believe I had a union steward in my crew. He was on the graveyard.

Q. There was one on your graveyard shift? [97]

A. The boilermaker, I believe, but we were the only boilermaker division under the machinists.

Q. Can you estimate at this time what portion of your lunch periods while you worked down there that you would not be busy at all?

(Testimony of John R. Hector.)

A. No. We had something to do most every lunch period.

Q. You stated there were some lunch periods where you would have nothing to do.

A. Well, there were a few, I imagine, and on those occasions I was probably out looking over or checking over some other stuff in the yard.

Q. At Mr. Mowrey's orders?

A. No; not necessarily.

Q. On your own initiative?

A. That is right.

Q. How often would you say emergency work was required to be done during your lunch period?

A. Quite often.

Q. How often?

A. Practically every day there was something.

Q. Practically every day from October, '43 up to the time you terminated, is that your testimony?

A. That is right.

Q. And that emergency work would require 30 minutes or more time to repair? [98]

A. No; not always.

Q. Maybe just five minutes?

A. Well, maybe 10, 15, maybe 20 minutes. You never can tell about how long you will have to work there.

Q. Then after that work was done you would let your crew off for 30 minutes, wouldn't you?

A. No.

Q. How long would you let them off for?

(Testimony of John R. Hector.)

A. Well, whenever the regular work started again, they started up. Sometimes they worked straight through.

Q. Wouldn't you let your men off to eat some time during the shift?

A. If they demanded it; yes.

Q. You had no set lunch period, then, for your crew; just when they requested it you would let them off?

A. That is right.

Q. Otherwise you would let them work?

A. The regular lunch period was from 4:00 to 4:30, I believe.

Q. I do not think you understood me. I am not trying to trick you here. Is it your testimony you would only let the men in your crew eat lunch when they requested it; that otherwise you would force them to work throughout the shift?

A. I didn't force anyone to work.

Q. Unless a man requested the time off to eat his lunch, you would keep him on the shift; is that right, Mr. Hector? [99]

A. Not if there was time for them to eat lunch. I would let him eat lunch.

Q. And if there was not time, you would keep him on the job?

A. That is right.

Q. Who gave you those orders?

A. Well, the orders were to get all the emergency work done, all the repair work done and keep it going.

Q. Did someone above you give you orders, Mr. Hector, that you were to do the work and not per-

(Testimony of John R. Hector.)

mit a man to eat lunch at any time during the shift? A. No.

Q. You were never given any such order?

A. No; that is right.

Q. You knew the men were not being paid for the lunch period time, didn't you?

A. That is right.

Q. You knew that to do work other than regular shift hours had to be express overtime authority, didn't you? A. That is right.

Q. That is the only way a man could get paid for other than shift time, isn't that right?

A. That is right.

Q. Prior to Mr. Mowrey giving you this order about doing emergency work during the lunch period, I take it you [100] did not work during the lunch period, is that right?

A. Yes; we did some of it during the lunch period. There was quite a few occasions when men would bring in their small leakage holes in the hose they would have, owing to the shorter stuff, like that. The men would wait until the lunch period to bring those in and get them repaired.

Q. Isn't it true there would be some jobs that would come in during the lunch period that would only require the work of one of the three of you?

A. Possibly, yes.

Q. Then the other two could take time off, couldn't they? A. That is right.

Mr. Sanders: No further questions.

(Testimony of John R. Hector.)

Redirect Examination

By Mr. Bertram:

Q. Mr. Hector, you had several types of hose there; you had air hose? A. Right.

Q. Oxygen? A. Right.

Q. Acetylene? A. That is right.

Q. What else? A. Water [101]

Q. Anything else?

A. We had the big oxygen-acetylene lines going to the shops in that period to fix.

Q. Steam?

A. No; we had very little to do with steam.

Q. That was carried in pipes, wasn't it?

A. That is right.

Q. Mr. Hector, some of those hoses were main lines only and others were auxiliary lines taken off the mains? A. That is right.

Q. Could you give the court, if you know, an approximation of how many employees would be dependent on their continuous operation for their work on a main air hose, for example?

A. No; I could not. It would have to come through the records of the Calship, because we would have most of the burners and the chippers. Practically everyone that worked on the outfitting dock would be dependent on those lines.

Q. It would run up into the thousands, wouldn't it? A. Yes.

Q. Do you know now if you would have been permitted to let one of those air hoses remain un-

(Testimony of John R. Hector.)

repaired while your men ate their lunch if they requested to eat their lunch?

Mr. Sanders: I object to that as ambiguous, irrelevant and hypothetical. [102]

The Court: It is highly speculative, isn't it?

Mr. Bertram: It is speculative.

The Court: Sustained.

Q. (By Mr. Bertram): Your instructions, then, as I understand it, were to make the repairs as soon as any break occurred?

A. As soon as we got a call; yes, sir.

Q. Did you also have to make repairs of individual auxiliary lines leading, for example, to a piece of welding equipment or burning equipment?

A. That is right.

Q. Unless those repairs were made, the men or the equipment would be idle, would they not?

A. That is correct.

Q. Did you have enough men in your crew to perform all the repair work in the regular hours of the shift and allow 30 minutes off for everybody?

A. We didn't have as many men in our crew as they had in the other shifts.

Q. You say Mr. Mowrey was your supervisor?

A. That is right.

Q. You were on graveyard shift?

A. That is right.

Q. On what shift did Mr. Mowrey work?

A. Day shift, although I believe he had charge of all three shifts. [103]

(Testimony of John R. Hector.)

Q. Did you see him on your shift on any occasion?

A. Yes; occasionally Mr. Mowrey would come in early and see us.

Q. How often?

A. Well, he might come in once a week, twice a week. Generally about once a week he would be in.

Q. Would he remain on your shift during the entire shift or just come in before the shift?

A. No; he had other departments that he were looking after, so he would probably visit with us an hour or an hour and a half.

Q. In other words, when you saw him it would probably be about an hour before your shift was due to end and his shift to begin?

A. Generally, yes.

Q. Did you ever see Mr. Mowrey there during the lunch period of your shift?

A. Well, I can't say that I have.

Mr. Bertram: I have no further questions.

Mr. Sanders: Just one question.

Recross-Examination

By Mr. Sanders:

Q. On these occasions where you did not have to do any work during the lunch period what did you do?

A. Well, sir, there were times when I would have to go [104] out in the yard and kind of look the thing over. On the end of each way there were what they call a way valve for the oxygen and

(Testimony of John R. Hector.)

acetylene lines, and if the way was all shut down, you could listen to these water lines. If they were bubbling, you had to locate your way, then you would have to go and find that leak; and we were quite often doing that on the lunch period.

Q. I say, on the days when you were not doing that and were not doing anything what did you do?

A. Well, I was probably sitting by the telephone, waiting for a call.

Q. Just sit around the office there?

A. That is right. [105]

* * *

SAMUEL S. GILL

called as a witness by the defendant, being first sworn, was examined and testified as follows:—

The Clerk: Please state your name.

The Witness: Samuel S. Gill.

Direct Examination

By Mr. Sanders:

Q. Mr. Gill, you are a licensed and practicing attorney in the State of California? A. Yes.

Q. Associated with Thelen, Marrin, Johnson & Bridges? A. That is right.

Q. How long have you been with that firm?

A. Since the middle of 1943. [107]

Q. Have you been with the firm in Los Angeles for that period?

A. That is right; I have been in Los Angeles since August 20th, I think, of 1943.

(Testimony of Samuel S. Gill.)

Q. Did you have occasion to do any work for California Shipbuilding Corporation?

A. Yes.

Q. From 1943 on?

A. The firm was the general counsel for California Shipbuilding Corporation during the war years from 1943 through until the completion of the shipbuilding program.

Q. In the capacity of counsel for California Shipbuilding Corporation did you have occasion to confer with them as to labor matters and contract matters in relation to the shipyard?

A. Yes; I did.

Q. Were you acquainted with the contracts that were in existence between Calship and United States Maritime Commission under which they were producing ships?

A. Yes; I was acquainted with all those contracts. They changed from time to time the type of contract.

Q. Were you acquainted with the contract between the unions representing the Calship and Calship, the master labor agreement?

A. Yes; I was and I still am.

Q. I show you Plaintiffs' Exhibit 1 and ask you if you [108] recognize that?

A. Yes; this is a copy of the master contract between the shipyards and the unions represented by the Metal Trades Council. This particular contract here applied to all the shipyards, not only

(Testimony of Samuel S. Gill.)

Calship, but it was signed by Calship and also by the Unions, international unions that were involved in building ships.

The Court: That is throughout the United States?

The Witness: Throughout the western states, this particular contract applied. It applied to shipyards, in particular shipyards at Richmond, those at Oakland and Los Angeles.

The Court: The Pacific Coast?

The Witness: Yes; the Pacific Coast, all of the Kaiser shipyards and Marin Ship up in Marin County, Calship and Consolidated Steel. It did not apply to Los Angeles shipbuilding here. There was a CIO union there, if your Honor please.

Q. (By Mr. Sanders): Directing your attention to paragraph 18 of Plaintiffs' Exhibit 1: "Grievances and Complaints," in your capacity with Calship did you have occasion to confer with Calship officials in regards to grievances and complaints filed under the contract?

A. Yes; I did. I might explain the procedure on that was: The shipyard had an industrial relations manager, and if there were any legal questions that arose in connection [109] with those complaints, why, he always consulted with me, that is, from August, '43 until the completion of the shipbuilding program.

Q. During that period, Mr. Gill, were there any grievances or complaints filed pursuant to para-

(Testimony of Samuel S. Gill.)

graph 18 by the union pertaining to lunch period claims to your knowledge?

Mr. Bertram: Just a moment. At this time, if the court please, I wish to object to this question on the ground that it is hearsay as to the plaintiffs and self-serving with respect to the defendant corporation.

Mr. Sanders: I limited it to his knowledge, your Honor.

The Court: Do you amend your question to ask him if he knows whether any complaints were filed?

Mr. Sanders: That was the way my question was phrased, "to his knowledge".

A. Complaints were filed under this particular—

Mr. Sanders: Just a minute, Mr. Gill. The court has not ruled on the objection.

The Court: Objection overruled; he may answer.

A. I know of no complaints that were filed under that clause which were concerned with the matter of lunch period time until—let's see; I guess until the first action was filed in 1946 that involved that question.

Q. And the same question pertaining to claims for wages for activities performed preceding the shift or immediately [110] at the end of the shift?

A. No; I know of no claims filed under this paragraph and no claims made until 1946, when some cases were filed under this paragraph, with the exception—I want to qualify that. There were some guards who were not subject to this contract,

(Testimony of Samuel S. Gill.)

plant guards, who made a claim in 1945 about their reporting time, when they had to stand roll call; but that was not made under this contract, because those guards were not under the master contract; they were not one of the regular Metal Trades Crafts.

The Court: Was it the course of business that all complaints filed by any employee or by the union under that contract would be referred to you, Mr. Gill?

The Witness: All of those that involved a question of wages would be referred to me. That was the regular course of procedure. There were some complaints, of course, that would be filed under this, involving a particular employee's grievances about their foreman and that sort of thing, I did not get those; but those that involved wages, and particularly this overtime matter, they were referred to me because, at the time I first started doing work for California Shipbuilding Corporation we had had one overtime case filed and there had been shortly before that an investigation made by the Wage and Hour Division; and so they referred all of them—as a result of the interest that was created, they referred [111] all of these matters involving any overtime claims to me. That did not go through their regular grievance channels except to get it, and then they would get in touch with me.

* * *

Q. (By Mr. Sanders): Do you know what kind

(Testimony of Samuel S. Gill.)

of contracts Calship had from October, 1943 up to October, 1945 with the United States Maritime Commission in connection with building ships? I am referring specifically, Mr. Gill, to the method of payment, the financing.

A. The ship contracts—that is what we call the ship contracts—were cost plus a variable fee, I think you might call it.

The Court: The Government paid everything; isn't that a short way to put it?

The Witness: Yes; the Government paid everything and the contractor's fee depended upon the man power hours consumed and the speed with which the ships were built.

The Court: The Government even carried the insurance, did it not?

The Witness: The Government carried all the insurance, [114] even the—well, it did not carry and fix liability insurance.

The Court: Didn't the Government own all the material?

The Witness: The Government owned everything.

The Court: Owned the facilities?

The Witness: Right.

The Court: And paid all bills?

The Witness: The Government owned everything and they had their people in the yard, too.

The Court: That is the Maritime Commission?

The Witness: The Maritime Commission offi-

(Testimony of Samuel S. Gill.)

entials were in the yard. In March of '45 they entered into what was known as a selective price contract, which was a fixed price contract. They would fix a price and, depending upon the price they chose, they would pay a certain maximum profit that would be allowed. If it picked a low price, their maximum profit could be higher. [116]

* * *

Q. (By Mr. Sanders): Also, Mr. Gill, during this period of October, 1943 to and including October, 1945, was California Shipbuilding Corporation engaged in any other way, other than building ships for the U. S. Maritime Commission?

A. No; they were doing nothing except building ships for the United States Maritime Commission. During that period they did a little repair work right at the end, but that was done through the United States Maritime Commission, too, although it was done for the Navy in some cases.

Q. What personnel did the Maritime Commission have in the shipyard during this period, to your knowledge?

A. They had a fellow who was—I can't remember the exact title now. He was sort of like a chief engineer; and then they had an auditor who had quite a large staff. I think [117] he must have had 25 people working under him there.

The Court: He made surveys from time to time to determine progress payments?

The Witness: Yes; he made surveys and checked

(Testimony of Samuel S. Gill.)

accounting and the invoices, and paid the costs as they were incurred by the shipyard.

In addition to that, they had inspectors in the yard who did inspection work. They had one man in the yard who was in charge of industrial relations generally for the Maritime Commission. As bearing on the problem here, the Maritime Commission auditors made spot surveys from time to time to see if the men were working and if they were being paid properly for their work. That was one thing they did from time to time; they made these spot surveys.

Mr. Sanders: No further questions.

Cross-Examination

By Mr. Bertram:

Q. Mr. Gill, from August 20th of 1943, when you, as a member of the firm of Thelen, Marrin, Johnson & Bridges represented California Shipbuilding Corporation, the corporation had on duty at all times at its yard a resident attorney by the name of Russell A. Bergaman, did it not?

A. No. Russell Bergaman was then the industrial relations manager. He was not the resident attorney. They had a resident attorney by the name of Bates Himes at that [118] time when I first started in.

Q. And Mr. Bergaman was at all times which you have mentioned a practicing and licensed attorney, was he not?

A. He was admitted to the State Bar of Cali-

(Testimony of Samuel S. Gill.)

fornia, but he was acting then in a capacity as industrial relations manager.

Q. And it was his duty to take up all grievances that were filed by the union and carry it up to the point where it reached you?

A. I believe that is a correct statement.

Q. In other words, nothing would go to you that had not first gone to Mr. Bergaman, isn't that right?

A. No; that is not exactly necessarily true because the entire procedure—Mr. Warfield, who was the administrative manager at first and later became the general manager, was a very active man, and if some problem arose, for example, with regard to payment of overtime or classification of employees, he might call me direct and Mr. Bergaman might not even know about it. That happened quite often.

Q. Ordinarily Mr. Warfield would know about it only if Mr. Bergaman had advised him that such a problem had come up?

A. No. There were a number of instances where that did not occur, where the Maritime Commission auditor might tell Mr. Warfield of some particular problem.

Q. Then let me put it this way: If the grievance arose through the formal procedure established by the union agreement, [119] that grievance would reach Mr. Bergaman before it would ever reach your office?

(Testimony of Samuel S. Gill.)

A. That would be the normal procedure; yes, sir.

Q. And at Mr. Bergaman's level many grievances were disposed of one way or the other without ever being referred to you?

A. I would say that there were many grievances disposed of, except those that related to overtime problems, particularly, under the Fair Labor Standards Act were referred to me, because at that time I was handling these matters with the Wage and Hour Division and we had already had some litigation filed on that. So Mr. Warfield had all those referred to me that involved overtime or the Wage and Hour Act.

Q. When do you say litigation was filed against the company?

A. Oh, I think the first case was filed by David Sokol in July of 1943, involving some exemption problems.

Q. You knew, did you not, that it was the practice in the yard for Russell Bergaman and certain superintendents and certain representatives of the unions to meet weekly to discuss various problems of employee-employer relationships in the yard?

A. They had meetings. They had a regular management-labor committee that met.

Q. Yes. You did not receive any reports as to the [120] topics that were discussed at those meetings, did you?

A. No; I don't believe I did.

* * *

H. J. LUEDER

one of the plaintiffs herein, called as a witness by the plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: H. J. Lueder.

Direct Examination

By Mr. Bertram:

Q. Mr. Lueder, following October 18, 1943 until the time you terminated with California Shipbuilding Corporation what was your capacity?

A. Maintenance electrician.

Q. What were your duties in that job?

A. Well, it was the upkeep or repair of electrical system on the ways.

Q. Did you have a fixed headquarters in your work or were you assigned to a general region within the yard?

A. Well, we had a small building in which we kept our tools and it was called "headquarters," but the work was done over the ways and on the ships.

Q. How many ways, if more than one, did you have within your area to maintain?

A. Just the one at one time. Just one at a time.

Q. And at various times following October 18th you might be shifted around from one way to another, is that right? [127]

A. Yes.

Q. But at any one time you just had one way to take care of?

A. That is all.

(Testimony of H. J. Lueder.)

Q. What shift were you working on during this period of time, Mr. Lueder?

A. That was way 7.

Q. What shift? A. What shift?

Q. Yes. A. Graveyard.

Q. Graveyard shift for all of the period of time following October 18 of 1943? A. Yes.

Q. And were any other employees employed in the same capacity, working alongside of you or in your crew?

A. As a rule, there was one or more.

Q. What were your duties, a little more specifically than you have described them, between you and the company employing you?

A. Well, we took care of the lights, the welding machines and cables, mostly the power and lighting circuits.

Q. Was it within your duties to string the lights into the hold of the ship as the construction of the ship progressed? [128]

A. Yes.

Q. And to remove the lights out of the ship at the time the ship was ready to be launched?

A. Yes.

Q. Change fuses?

A. Changed the fuses, if necessary.

Q. Mr. Lueder, what are you claiming in this action? A. Half hour lunch period.

Q. Do you claim that you were required to or did perform duties for the employer during the lunch period? A. Yes.

(Testimony of H. J. Lueder.)

Q. Will you describe what duties you performed during your lunch period?

A. Well, there was times in which on the ship they were bringing in steel and the holds happened to be dark, and we would have to spend the lunch period putting lights in the holds; or it might be possible that some of the steel had been let down on cables and they had to repair, or the lighting beneath the ways to the various offices might go out and we would have to see if they were fused and find the trouble.

Q. Were those generally the same duties that you performed during the rest of your shift?

A. Oh, yes.

Q. Let me ask you this, first: Did anybody give you any instructions to perform this work during the lunch period? [129]

A. Yes; we had orders in case of trouble to see that it was done.

Q. Do you know why work of that sort was done, particularly stringing lights into the holds, was done during the lunch hour rather than at other times in the shift?

A. Well, if we didn't do it, there would be no lights for the different workmen to see by when working in those particular places.

Q. Were you required to perform some duties during every lunch period which was regularly assigned to the other employees on the graveyard shift?

A. Oh, yes, sure.

(Testimony of H. J. Lueder.)

Q. Were you relieved of your duties for any other time during the shift for the purpose of eating your lunch?

A. No; I can't say that we were.

Q. Did you take a lunch to work with you?

A. Yes.

Q. Did you eat it on the shift?

A. I ate it, yes, during the shift.

Q. Did you have any special time that you started to eat your lunch?

A. Well, we had a lunch period. a half hour lunch period but, as a rule, we didn't have time or, if we did start our lunch, why, we had to lay it down and go out on a case of trouble some place.

Q. Where did you keep your lunch, in this headquarters shack? A. Yes.

Q. Did you have a telephone in that shack?

A. No.

Q. What would interrupt you during your lunch period, if you had started to eat your lunch in the shack?

A. Generally the same trouble that occurred during the rest of the shift.

The Court: More of the same trouble?

The Witness: More of it; yes.

Q. (By Mr. Bertram): The employee who worked alongside of you—by the way, who was it?

A. Well, I had various men. I always breaking in a new man, but the man that worked with me a longer period than any of the rest, his name was Sam Whitney.

(Testimony of H. J. Lueder.)

Q. Did you ever work along with Mr. Garcia, who is a plaintiff in this action? A. No.

Q. Mr. Lueder, do you recall of any occasion in which you were able to take your lunch, the whole lunch, without interruption by some duties?

A. No.

Q. Who was your immediate superior?

A. Well, the foreman was John Leinen. [131]

Q. Did you ever have any discussion with Mr. Leinen, is it? A. Leinen.

Q. L-e-n-n-o-n? A. L-e-i-n-e-n.

Q. L-e-i-n-e-n, Mr. Leinen, with respect to the situation regarding the lunch periods?

A. Oh, yes.

Q. Where was your first such discussion with him?

A. Well, it was, I guess, when we first started to work on the ways.

Q. When was that? A. That was in '42.

Q. What was the discussion you had with him?

A. What we were going to do about this over-time business.

Q. What reply did he make to you?

A. Well, he said, "You know, there is a war on and it will possibly be taken care of later on."

Q. Did you discuss that with him on later occasions when nothing had been done?

A. Well, it was brought up from time to time but there was nothing done about it, no decision made.

(Testimony of H. J. Lueder.)

Q. By the way, you were employed in the capacity of a journeyman, were you not?

A. Yes. [132]

Q. As a journeyman did you have authority, or could you take your problem up to someone in authority over Mr. Leinen?

A. Well, possibly I could, but that was not the procedure.

Q. You had to depend on Mr. Leinen taking it up, was that it?

A. Take it to the foreman, yes.

Q. Who was the superior over Mr. Leinen?

A. The superintendent, a Mr. McFarland.

Q. I see. You never had any discussion with Mr. McFarland concerning this problem?

A. No.

Mr. Bertram: You may cross-examine.

Cross-Examination

By Mr. Sanders:

Q. You were down at Calship quite a few years as an electrician, were you not? A. Yes.

Q. How many, do you recall?

A. About——

Q. Four, wasn't it?

A. I believe it was four.

Q. From 1942 on? A. Yes.

Q. And you were acquainted with the counseling section [133] that they had in the yard there?

A. No.

(Testimony of H. J. Lueder.)

Q. Where you could make complaints? You never heard of that? A. No.

Q. You talked to Mr. Leinen in 1942. Was that the first part of 1942, by the way?

A. I think it was the latter part of '42.

Q. And after that did you ever try to get any relief from your union about this matter?

A. Well, I was a steward there for four years and at one time took it up with the senior steward, and we got the same answer at that particular time: That there was a war on and that it possibly would be taken care of later on.

The Court: By "steward" do you mean a steward of the union?

The Witness: Yes; they are a representative of the union.

Q. (By Mr. Sanders): The steward above you would not give you any satisfaction, is that right?

A. That is it.

Q. Well, then, your union had meetings from time to time, didn't it?

A. Sure, every month.

Q. And every member had the right to come up and state his case, didn't he? [134]

A. Well, that is what some people think.

Q. I am asking if that is a fact in your union. I do not know, and presume you do. Couldn't you attend your own union meetings?

A. Oh, yes.

Q. And get up and make a complaint about your working conditions, if you wanted to?

(Testimony of H. J. Lueder.)

A. Well, at that particular time if anything was said about a half hour overtime, you were told that there was a war on and you would be taken care of possibly later on.

Q. Did you get up and mention this?

A. No.

Q. At a meeting? A. No.

Q. So that is only your surmise, that you would have been told that if you had gotten up, is that right?

A. Well, I have been a member for pretty close to 40 years. I know generally what the procedure is.

Q. Well, I am asking you. That is just your conclusion of what would have happened if you had gotten up, since you did not so object, is that right?

A. I would have been probably told to sit down.

Q. As the union steward, you were aware of the fact that the lunch period was not compensated for, weren't you? A. Oh, yes. [135]

Q. And you were aware, I presume, of the grievance procedure if you had any grievance as to working conditions, that they had to be filed within a certain time or they would be deemed waived under your bargaining agreement, isn't that right?

A. No; I knew nothing about that.

Q. You did not know about that?

A. No.

Q. You said one other man worked with you in this shack or out of this shack most of the time?

A. Yes.

(Testimony of H. J. Lueder.)

Q. Sometimes maybe more than one man?

A. What?

Q. Sometimes perhaps more than one other man?

A. Oh, yes.

The Court: What type of work did you do other than during the lunch period?

The Witness: Well, practically all our work was trouble, fuses out of various circuits, welding machines, blowing fuses or hooking up welding machines, connecting up lights, making up stringers.

Q. (By Mr. Sanders): Stringing lights, replacing fuses, repairing cables. What else, if anything?

The Court: He has testified that he just did more of the same that he did all the rest of the day, only he did [136] it during the noon hour. The electrical system did not know it was lunch time and it had the same problems, I assume, during the lunch hour as it had the rest of the day, is that it?

The Witness: That is it.

Q. (By Mr. Sanders): How many fuses on an average would you have a replace in a day yourself?

A. Well, a lot depended on the weather conditions; generally 25 to 50.

Q. Where would you eat your lunch, in the shack?

A. Generally attempted to eat our lunch in the shack; yes.

Q. Any place else?

A. No; not unless we had a call and I had started to eat lunch and I took it along with me in most cases.

(Testimony of H. J. Lueder.)

The Court: Did you ever sit down to eat lunch and get a call that a fuse had blown?

The Witness: Oh, plenty of them.

Q. (By Mr. Sanders): What would be your best estimate of the longest period that you had during the lunch period where you had no calls, five minutes?

A. Well, that is a pretty hard question to answer.

Q. Well, practically, you were busy all the time?

A. Busy all the time.

Q. Just a few minutes break here and there?

A. That is it.

The Court: Didn't you ever have a perfect day?

The Witness: No.

The Court: Where you did not have any calls?

The Witness: No.

The Court: There never was a day when you were not interrupted during your lunch hour, is that it?

The Witness: Oh, no.

Q. (By Mr. Sanders): During the lunch period, if a fuse had burned out some place, I take it that means taking the fuse, unscrewing it, and putting another in, is that right?

A. It depends on the type of fuse.

Q. Who would go out on that, one man or both of you?

A. I always took a man with me because I had so many new men with me. I was always breaking in a new man.

(Testimony of H. J. Lueder.)

Q. Was Sam Whitney a new man?

A. No. He was only with me a short time.

Q. He was an old-timer, wasn't he?

A. Yes; he was an old-timer.

Q. This condition of these activities during your lunch period were prevalent throughout your employment at Calship from the very beginning?

A. Oh, yes, yes.

Q. How long would it take you to string lights in a hold? [138]

A. Well, a lot depended on if I had anyone to help me or not. On some occasions I had no one helping me and it would take—or, possibly a couple of hours or more.

Q. Normally you would take the other man with you, I thought, when you went out on the job?

A. Oh, yes, yes.

Q. Is it your testimony now that part of the time you were the only man on the job?

A. Well, every now and then, why, we would have a couple of jobs, two or three jobs would come in at the same time. One man would be stringing lights and the other man would go out and chase down the trouble.

Q. Did the other man eat lunch with you?

A. He carried lunch; yes, sir.

Q. Did he eat lunch with you?

A. I never paid any attention to him.

Q. You never observed him eating lunch?

A. No.

(Testimony of H. J. Lueder.)

The Court: What happened during the lunch hour, is that a fair sample of what happened all during the shift?

A. We were generally busy most of the time.

The Court: Did you ever have any 15 or 20-minute lulls?

The Witness: Oh, yes.

The Court: 30-minute lulls?

The Witness: Yes. [139]

The Court: Hour lulls?

The Witness: Well, very seldom did you ever get that long a time when there was nothing to do.

The Court: Can't you remember a few such possible periods?

The Witness: No. We always had plenty of work to do in the shack. We had plenty of lamp cords and various cables to repair.

Q. (By Mr. Sanders): Did Leinen or any other foreman tell you that where you had a lull period as far as trouble on the ways, that you had to repair things in the shack?

A. Oh, yes, sure.

Q. What about the lunch period; did he tell you not to take time off for lunch?

A. Well, that was inferred. If we had that work to do, it was thoroughly understood, if it was not done, why, they would get somebody else to do it.

Q. You mean you inferred?

A. It was inferred.

Q. That you had better do it during your lunch period or they would get somebody else to do it?

(Testimony of H. J. Lueder.)

A. That is it.

Q. From what he told you; he didn't actually tell you that, did he?

A. Well, that didn't need to be told you.

Q. What did he tell you? [140]

A. He told us to stay on the way, don't wander off, and if that trouble showed up, get it and fix it up.

Q. Did you ask him about the lunch period, about time off to eat lunch?

A. That was asked him long before we ever started.

Q. You say you asked him long before?

A. Sure.

Q. When was that?

A. What we were going to do about the lunch period.

Q. What did he tell you at that time?

A. "Don't you know we have got a war on? That will be taken care of later on."

Q. At that time, in 1942, did you report that to the union? A. No.

The Court: Did you actually eat lunch over-time?

The Witness: Sometimes.

The Court: You worked it in somewhere, is that it?

The Witness: I only took one sandwich. I didn't take much.

The Court: You were on the graveyard shift?

(Testimony of H. J. Lueder.)

The Witness: Graveyard shift.

Q. (By Mr. Sanders): If you wanted to, you could eat before the regular graveyard lunch period?

A. Well, we had orders not to, but I presume it was done. [141]

Q. You did not, though? A. No.

Q. Did you after the lunch period?

A. Did I what?

Q. Did you sometimes eat after the lunch period?

A. Well, I can't remember whether I did or not.

The Court: Every day you ate either before or during or after the lunch period, did you not?

The Witness: That is it.

Q. (By Mr. Sanders): Didn't Leinen tell you that you were supposed to take your lunch period off and eat at that time? A. No.

Q. He told you you were supposed to work during that time?

A. That is, if the work was there to be done, get out and do it.

Q. He did not tell you you could not take your lunch later, then, did he?

A. Oh, no; nothing said about that.

Q. I assume that you could take your lunch later?

A. Well, there were several orders put out that no one was supposed to eat their lunch before that lunch period. That was very well understood for years there.

(Testimony of H. J. Lueder.)

Q. But if you had emergency work during your lunch [142] period it was understood you could eat later on, is that right?

A. I don't know whether it was understood or not. They did it.

Q. Did you do it?

A. Well, I don't remember whether I did or not.

Q. But you do remember you had your lunch every day?

A. I got away with it some way.

Q. And you do remember that you were always busy during the regular graveyard lunch period?

A. Oh, absolutely.

Mr. Sanders: No further questions.

Mr. Bertram: Call Mr. Garcia.

The Court: You may step down, Mr. Lueder.

JOHN S. GARCIA

one of the plaintiffs herein, called as a witness by plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: John S. Garcia.

Direct Examination

By Mr. Bertram:

Q. Mr. Garcia, what was your job at California Shipbuilding Corporation after October 18, 1943?

A. My job, I worked for a time as marine wire-

(Testimony of John S. Garcia.)

man for about two or three months, something like that, and then I was transferred over to maintenance electrician. [143]

Q. As I understand it, your claim now relates only to the time that you were employed as a maintenance electrician? A. That is right.

Q. Do you now have any independent recollection of what the dates of that period were?

Or, may we stipulate to it, counsel?

A. No; I don't.

Mr. Sanders: In July, 1944, until his termination in May or April of 1945, he was a maintenance electrician.

Mr. Bertram: All right.

Q. Confining your testimony, then, Mr. Garcia, to that period what were your duties as a maintenance electrician?

A. As a maintenance electrician my duties were to keep the way and the boat lit up at all times, and to see to it that all the holds, all the hatches and every possible place where people would get hurt to be constantly lit up.

Q. Were you assigned to a particular way in the shipyard?

A. I was assigned to No. 2 way for a time and then I was shifted around from 1 to 7 different ways.

Q. At any one time your duties were performed in No. 1 of the ways? A. That is right.

Q. Only one of the ways?

A. That is right.

(Testimony of John S. Garcia.)

Q. Was each of the ways on which you worked equipped [144] with an electrician's headquarters?

A. We had what we called a shack, and prior to laying down of the keel our shack was always on what I would call the starboard side, either side of the way, and as the ship progressed, why, they moved up the shack to—well, when the ship was about halfway done they would move it up to the top deck and our shack would remain there until the launching time.

Q. Now, what is your claim in this action, Mr. Garcia?

A. My claim is 30 minutes lunch period.

The Court: What shift did you work?

The Witness: Swing shift.

The Court: Always the swing shift?

The Witness: For a while on swing shift and then I would change over to day.

The Court: Day or swing?

The Witness: Day or swing.

Q. (By Mr. Bertram): Is it your claim that you worked during your lunch period, both while you were employed on the swing shift and while you were employed on the day shift?

A. It is.

Q. How many maintenance electricians worked in your crew on your particular way at any one time? A. Two.

Q. Yourself and one other?

A. Myself and another. [145]

(Testimony of John S. Garcia.)

Q. What duties did you perform during your lunch period?

A. During my lunch period there would always be somebody that would come to the shack with either trouble on the way, trouble in one of the holds, the lights, whole strings would go out at one time and there would not be no way for the workmen of the different crafts to get out of that hold unless they had lights. And they had ladders to go up, but if one put their foot through one of those ladders and fall off, they would break their leg or bruise their arm or something. And I remember distinctly what they called the safety engineer got after us a number of times to keep the boat lit up as well as we could, especially the hatches and the gangways coming down from the top deck.

Q. And were those duties performed by you during your lunch period also the duties that you performed during the rest of your shift?

A. That is right; that is right.

Q. Did you carry a lunch to work with you?

A. I did.

Q. Did you get a chance to eat your lunch some time during the shift?

A. I would grab a sandwich between trouble calls and I ate it, but I ate it sometimes outside the shack, sometimes down in one of the holds. I would take an apple in my pocket.

Q. How big a lunch did you carry with you?

A. Two sandwiches and an apple, sometimes, a banana or something.

(Testimony of John S. Garcia.)

Q. Do you remember any occasion on which you were able to complete your lunch without interruption? A. No; I don't.

Q. And by interruption I mean interruption by some duty to be performed?

A. No; I don't.

Q. Did you customarily attempt to start your lunch at the same time each night or each day?

A. You couldn't. You couldn't regulate the time that you were going to eat your lunch or whatever you happened to carry with you.

Q. If you missed your lunch period because of duties to be performed during that part of the day, were you relieved of your duties during some other part of the shift for the purpose of eating your lunch?

A. I was never relieved of my duties.

Mr. Bertram: You may cross-examine.

Cross-Examination

By Mr. Sanders:

Q. How many fuses would you change during the shift on an average, about 25 to 50?

A. Sometimes even more than that.

Q. That would be a good average, wouldn't it, 25 to 50? [147]

A. That would be a good average; yes, sir.

Q. The lights were going out very often on these ships, weren't they?

A. That is right; yes, sir. Sometimes whole strings of them, we used to change them. We used to use as many as two cartons of bulbs a night.

(Testimony of John S. Garcia.)

Q. Electric light bulbs?

A. Electric light bulbs; and that can be checked by Mr. Paul Shurk who was our foreman.

Q. You mean they were burning out?

A. They would burn out and the whole string would go out, and it was our duty to go and see where the trouble was and put all those lights that would burn out back into service again.

Q. I assume that when you went out on these jobs you and the other man would always go out there together, is that right? A. Yes.

Q. Like to change a fuse, the two of you would go out to change it? A. Yes; we would.

Q. Or to put in light bulbs, both of you would go out? A. That is right.

Q. You had no lull periods at all during the shift; you were just busy all the time, is that right?

A. We had lull periods, I would say, oh, five to ten [148] minutes, but we were continually walking through the holds. That was our instructions, our explicit instructions from Mr. Shurk: "Walk through the holds and find your trouble. If they are supposed to light up, get them lit up. If there is trouble under a way, go check it and get it fixed up."

Q. The two of you would walk together around the ship?

A. Sometimes; not all the time. One would start one side of the boat and the other would go the other side.

(Testimony of John S. Garcia.)

Q. Then if a foreman some place on the way, for example, found some trouble he would walk around the ship until he found you and would give you the report of the trouble, is that right?

A. The foreman would get his orders. He had an office under way 7 and the report would come in there, and then he would relay it to us to our shack. We had notes delivered to us in a little box, and he put the trouble notes in there.

Q. What instructions were you given as to when you would eat your lunch?

A. There was never any instructions given as to that.

Q. When did you eat your lunch, before or after or during the regular shipyard lunch period?

A. We ate our lunch whenever we could in between trouble shooting.

Q. Well, when would you normally? Didn't you have a regular time when you generally ate it every day?

A. No. No; we didn't have any regular time. I knew there [149] was a time to eat lunch, like when I was employed as a painter, and I thought it was very strange that the maintenance electricians didn't have their time off to eat their lunch.

Q. Didn't you take time off for lunch?

A. No; I didn't.

Q. Did somebody tell you you could not take time off for lunch, Mr. Garcia?

A. Nobody told me I couldn't take time.

(Testimony of John S. Garcia.)

Q. What? A. Nobody told me.

Q. You knew that lunch periods you were not being paid for, didn't you?

A. That is right.

Q. And nobody told you that you were to work during the lunch period, during the time you were eating your lunch, did they?

A. They told us to stand by for trouble.

Q. Didn't you ask anybody: What about my lunch? When do I eat lunch?

A. I did. I told Mr. Bland, who was my lead man; I asked him, I said, "Don't these fellows ever eat lunch on these ways?" And he says, "Well, if there is trouble, go out and get it, go out and check it and fix it."

Q. Mr. Bland, was that the man you worked with?

A. Mr. Bland was our lead man; Mr. Shurk was our foreman. [150]

Q. Mr. Bland was on the way with you, wasn't he?

A. Mr. Bland was not on the way with me. I was checking from one to seven.

Q. He said when there was trouble to go out and fix it?

A. That is right; and there was trouble all the time.

Q. And did he also say in that conversation, Mr. Garcia, "Never take any time off to eat your lunch"?

A. He didn't say that.

(Testimony of John S. Garcia.)

Q. How long would you say you would spend to eat your lunch normally, about five minutes, maybe?

A. About five, four minutes, three minutes, whenever I could grab a bite.

Q. I mean the total time you would take to eat your lunch.

A. Oh, well, the normal time I would take to eat a sandwich, five minutes, four minutes.

Q. That is the time you would take to eat?

A. That is right.

Q. How many sandwiches did you say you took?

A. Two sandwiches.

Q. How many apples?

A. One apple and sometimes a banana.

Q. Did you eat with the other man that worked with you?

A. No; I didn't. I didn't notice him.

Q. Where did he eat? [151]

A. I don't know where he ate.

Q. I thought you traveled together, Mr. Garcia?

A. Sometimes, sometimes we traveled together. Sometimes, like I say, we would go together and he would go to one side of the boat and I would take the other side of the boat.

Q. So he would probably be eating when he would be walking around there or some place?

A. Possibly.

Q. Did you used to eat when you were walking around sometimes?

A. Sometimes.

(Testimony of John S. Garcia.)

Q. And when you were working you would have a sandwich in one hand and a string of lights in the other?

A. Not necessarily; but I would eat at some time.

Mr. Sanders: No further questions, your Honor.

* * *

JOHN ZUPONCIC

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: John Zuponcic.

The Clerk: Spell your last name, please.

The Witness: Z-u-p-o-n-c-i-c.

Direct Examination

By Mr. Sanders:

Q. In October, 1943, Mr. Zuponcic, you were employed by California Shipbuilding Corporation in what capacity? A. Chief electrician.

Q. And did you continue in that capacity?

A. I continued in that capacity until sometime in 1945—I don't recall the date—where I took charge of all electrical and also mechanical maintenance, in charge of the trucking and [160] in the yard, etc.

Mr. Bertram: Counsel, if your records show the date, we will stipulate.

Mr. Sanders: I do not have it.

Q. Do you recall what date that the acetylene,

(Testimony of John Zuponcic.)

oxygen, and compressor plants in the shipyard came under your supervision?

A. It was early in 1945, I believe.

Q. Prior to that time they were not under your supervision, is that correct? A. That is right.

Q. As chief electrician from October, 1943 up to October, 1945 you had the maintenance electricians under you, did you not?

A. That is right.

Q. What provisions, if any, did you make as to lunch period for these maintenance electricians? I am speaking of the ones that worked on the ways that you have heard the testimony about here today.

A. Well, we had a problem there where it was necessary for us to maintain 24 hours' production, and the only way we could do it was that if a trouble occurred during noon hour, it was necessary for someone to fix it; and that was understood by all the foremen, lead men, and so forth. With this provision: That whenever they did take and do any work during [161] a noon hour, they were supposed to take a lunch hour or take their lunch either previous or after. And I was called on the carpet time and time again on that very fact about the men eating lunch before the noontime. And I said, "Well, now, those fellows are maintenance electricians and they are going to have a job to do that is going to be necessary to be done at 12:00 o'clock noon," or as the case may be, during the noon hour.

Q. Were any orders ever issued in your depart-

(Testimony of John Zuponcic.)

ment, to your knowledge, that the men were to take less than 30 minutes to eat their lunch?

A. Absolutely not.

Q. Did you ever receive any complaints from any of these maintenance electricians that he did not have adequate time or did not have his lunch period to eat his lunch in?

Mr. Bertram: Just a moment. I will object unless it referred to plaintiffs. They are the ones who would be bound by a complaint or failure to make complaint.

The Court: Do you amend your question?

Mr. Sanders: Pardon, your Honor?

The Court: Do you amend your question?

Mr. Sanders: Yes.

Q. Did you ever receive any complaint by either plaintiff Garcia or by plaintiff Lueder?

A. Oh, no; that never was brought to my attention. [162]

Q. These maintenance electricians had to string lights in the ships, is that right?

A. To some extent, yes. Most of the stringing of the lights on the ship ways were done by a separate crew that went through and did nothing else but string lights. However, there was times on various shifts, swing shifts and graveyard, where it was necessary for the men up on the ship way to string the lights, due to the fact that a section came in at that particular time and it was necessary for them to get it lit up.

(Testimony of John Zuponcic.)

Q. As an electrician, Mr. Zuponcic, if 50 fuses were burning out on the swing shift of one maintenance electrician who covered one way, would that indicate that the lights were going out for a considerable portion of the time?

A. Well, that would indicate to me that the next day I would probably have been fired.

Q. What do you mean by fired?

A. Well, the next day—every day we had a lunch, wherein the various superintendents and foremen brought their grievances, and if the lights or welding machines or any other electrical equipment was out for any great length of time, I would have heard about it.

Q. As to the compressor, oxygen, and acetylene plants, you say you took over supervision of those in 1945 sometime?

A. That is right.

Q. What supervision did you have? [163]

A. In what way?

Q. What was your capacity in regard to these three plants?

A. Well, my title was "superintendent of mechanical maintenance," which included electrical maintenance and electrical construction. I had charge of the electrical maintenance; I had charge of electrical facility installations throughout the shipyard; I had charge of all the rolling stock, which was all of the trucks, tractors, cranes, etc.; I had charge of the machine shop and charge of the compressor plant and the oxygen plant and the acetylene plant. However, there were men under-

(Testimony of John Zuponcic.)

neath me that were given direct charge over these various units.

Q. Under your supervision?

A. That is right. In other words, Mr. Alcott was in charge of mechanical maintenance; Mr. Buster was in charge of the garage; Norman Duers was in charge of the electrical maintenance; and Bob Monson was in charge of the construction. In other words, it was all delegated to various foremen or superintendents.

Q. Was Mr. Alcott, who was under you, the man in charge of the compressor, oxygen, and acetylene plants?

A. Yes; he was in charge of the mechanical maintenance, representing all the mechanical repair in the yard. He was in charge of the operation of the acetylene plant and the [164] operation of the oxygen plant.

Q. Did you ever give him any orders, Mr. Zuponcic, that the men were not to be given their full lunch period time in those plants?

A. No; never gave any of those orders.

Q. Were you ever informed that the plaintiffs or any other operators in those plants were not getting their lunch period?

A. Well, I knew that the men had to work through their lunch hour but, to my knowledge, they were all able to eat lunch at any time that they saw fit.

Q. You never received any complaints that any

(Testimony of John Zuponcic.)

operators were not getting their lunch hours in the oxygen, compressor, or acetylene plants, did you?

A. No; I didn't.

Q. In connection with your activities at Calship did you have occasion to attend what is known as the "blue plate luncheons"?

A. Yes. That was a daily luncheon.

Q. What was the blue plate luncheon?

A. Well, it was really what they called the blue room. It was a room that was adjoining the cafeteria wherein all the superintendents and other interested parties, or mainly superintendents and general foremen and foremen and the manager of the yard and the head of the Maritime Commission came for dinner every day. And after the dinner — [165]

The Court: By "dinner" you mean at the noon time?

The Witness: At noon time, yes. After the noon dinner, why, there was always a speaker and we discussed some problems pertaining to the yard, either labor or production or what was going to develop in the future, and problems that the various individual superintendents had; and if any superintendent, for example, had a problem in production or some phase of the job was holding his particular job up, he would bring that up and ask if there isn't some way that the trouble that was holding back production could not be sifted out and brought out so that he could go ahead with his end of the job.

(Testimony of John Zuponicic.)

Q. By Mr. Sanders: Were the representatives of labor unions in attendance at those luncheons?

A. No; just on certain occasions when they happened to be in the yard. They were not a regular visitor there at all.

Q. At any of these luncheons did you receive complaints from any of the superintendents that the lights were going out so much on the ways that the men could not work?

A. Well, at times we would get a complaint—oh, for various reasons. There would be a bad power failure, and I would have the answer for him, tell him just exactly what happened and how long they were down.

The Court: We are talking about fuses blowing out. Did you ever have any complaints about fuses blowing out?

The Witness: I have had complaints, yes, of fuses, but I [166] would say they were very rare. They were not an occasion whereby there would be thousands of fuses blown in a night.

The Court: Or even 25 or 50?

The Witness: Well, let me say this: We had 14 ship ways——

The Court: Don't tell us all about that. Just give us an estimate of how many fuses on a shift on an average would blow out, say, on the graveyard shift. How many fuses would you use?

The Witness: Oh, I would say for the whole shipyard, possibly a couple of hundred.

(Testimony of John Zuponcic.)

The Court: You mean to be replaced every night?

The Witness: The whole shipyard.

The Court: Any further questions?

Mr. Sanders: No, your Honor.

The Court: Cross-examination?

Mr. Bertram: Just one or two questions, your Honor.

Cross-Examination

By Mr. Bertram:

Q. Mr. Zuponcic, you spent most of your time at the yard on the day shift, didn't you?

A. I was there on all shifts. I spent possibly 16 hours a day there.

Q. You would not and did not give any orders directly to a journeyman?

A. No, sir. It was definitely against the union rules, [167] where I could only talk to my immediate subordinates.

Q. That would be through a superintendent?

A. That is right.

Q. Who in turn would carry their own orders through the foremen, down to the lead men and then the journeymen, is that right?

A. That is right.

Q. You knew, of course, as you testified, that the men in the jobs that these plaintiffs were in worked during the regular yard lunch period?

A. Yes; night and overtime, you know, whenever it was necessary.

(Testimony of John Zuponcic.)

Q. Whenever things were to be done?

A. That is right.

Q. And I think you testified that it was your order that when that happened they should be given another luncheon period? A. That is right.

Q. Isn't it a fact, Mr. Zuponcic, that if another lunch period were provided, they would still be under the same orders to take care of any repair or maintenance that might come up?

A. It is possible.

Q. That is the fact?

A. It is possible; yes.

Mr. Bertram: I think that is all, your Honor.

The Court: Anything further? [168]

Mr. Sanders: I have one matter I neglected to go into on direct, your Honor. I would like to go into it.

The Court: You may.

Redirect Examination

By Mr. Sanders:

Q. Are you familiar with the procedure for overtime worked by hourly wage employees on Cal-ship other than regular shift time?

A. For overtime? Well, we had a regular procedure. I could not authorize any overtime myself. The electrical maintenance department worked on a little different contract, as I understand it, from the rest of the yard, wherein we were under the Maritime Commission. Mr. Jagel, he had charge of the facilities. We had to get an approval from

(Testimony of John Zuponcic.)

the Maritime Commission direct for all overtime worked by our department.

Q. In other words, would a foreman or lead man have the authority to order journeymen to work other than the regular shift hours?

A. Only if he got the authority from me, that is, came up through me and I would request it from my superior, and he would in turn request it from the Maritime Commission.

Q. That was the procedure throughout the war years with Calship, was it not?

A. That is right.

Mr. Sanders: That is all. [169]

* * *

MELVILLE ALCOTT

called as a witness by plaintiffs in rebuttal, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Melville Alcott.

Direct Examination

By Mr. Bertram:

Q. Mr. Alcott, from October of 1943 you were employed by California Shipbuilding Corporation in what capacity?

A. Supervisor, assistant chief inspector was the title given me.

Q. In that capacity what jurisdiction did you have and over what phase of the yard?

A. I had charge of all utilities, consisting of the

(Testimony of Melville Alcott.)

acetylene plant, compressor plant, steam plant and, towards the [171] end of that time, the mechanical maintenance.

Q. Until what time did you continue in that capacity, Mr. Alcott? A. Sir?

Q. Until what time did you continue to work on that job? A. In 1945.

Q. What part of 1945?

A. Well, until I was laid off. I think it was in August.

Q. For a portion of that time was Mr. Zuponcic in authority over you? A. He was.

Q. For what period of time?

A. Well, approximately as I remember it, three months. I couldn't give you the dates on that, but I think that was about right.

Q. Was that the last three months of your employment there?

A. No; it was toward the end of the building of the ships. Now, I could not give you the dates on that at all.

Q. During that three-month period did you receive any orders of any kind from Mr. Zuponcic with respect to the operation of the acetylene plant, the compressor plant, or the oxygen plant?

A. No; I did not receive any direct orders from Mr. Zuponcic regarding them, except consultation on things [172] that pertained to the different plants.

Q. During the entire period of your employment

(Testimony of Melville Alcott.)

with Calship while you were in charge of those three plants was any provision made for the employees operating those plants to take their lunch period?

A. Not to my knowledge.

Q. Did they take a designated lunch period?

A. They did not.

Q. Were any orders issued to them that they could not take a half hour lunch period?

A. I can't say that there were any orders issued to that effect; but it was generally understood that they worked from 8:00 until 4:30, that is, the regular shifts, and a man could not leave any of the different utilities except for a very short period of time.

Q. What do you mean "for a very short period of time"?

A. Well, at the steam plant it was allowable to leave for 10 minutes for toilet facilities, and the toilet facilities in the compressor plant were in the plant, and the man was not supposed to leave the plant at any time. The acetylene plant was very close to the compressor plant, and the acetylene operators could use the facilities in the compressor plant.

Q. At any time, Mr. Alcott, was any attempt made to give the men a half hour lunch period?

A. I believe that Mr. Kell made that attempt but nothing [173] ever came of it.

Q. Was any effort made to obtain payment for the extra half hour that the men were working?

(Testimony of Melville Alcott.)

A. Well, there were rumors to that effect, but I can't say that anything came of that, either.

Q. Mr. Kell was in authority over you for the entire period of time except while Mr. Zuponcic exercised authority for three months, is that right?

A. Mr. Kell was.

Q. And what was Mr. Kell's capacity?

A. Mr. Kell's capacity was superintendent of maintenance.

Mr. Bertram: You may cross-examine.

Cross-Examination

By Mr. Sanders:

Q. You knew Foreman Yates, Mr. Alcott?

A. That is right.

Q. He was on the day shift, wasn't he?

A. He was.

Q. Where was your office in distance to the acetylene plant, how far away?

A. Well, it was probably a thousand feet, I should say.

Q. Did Mr. Yates bring over reports to you daily? A. He did.

Q. The acetylene plant had a crew of how many?

A. At different times it varied. The acetylene plant was enlarged and there were two and sometimes three men on duty [174] at the acetylene plant at all times.

Q. How many on the day shift, do you recall, in 1944?

A. Toward the last, when we were running it very heavy, it was three men.

(Testimony of Melville Alcott.)

Q. In the latter part of the shipyard operation down there was there any change made as to the gauges in the acetylene plant? A. Yes.

Q. What was the change?

A. Complete new equipment was put in the acetylene plant and the—well, I couldn't give you the identical details on that.

Q. Well, weren't the gauges all consolidated?

A. They were.

Q. So one man could see all the gauges?

A. That is right.

Q. You stated that the orders were that the men were to stay on the job throughout their shift. Isn't it true that your requirement was that, for example, in the acetylene plant, that you wanted a man in there at all times?

A. No; I can't say that that is correct.

Q. What was correct, Mr. Alcott?

A. The acetylene plant was divided into three parts; that is, half of the machines were in one part and half in another, and the loading compartment was in another department, [175] that is, another part of the building between the two plants; and it was necessary for the men to stay in their one part of the building, that is, not necessarily to be there for—maybe they could be out of there for four or five minutes at a time, but acetylene generators are very tricky and you have got to go around and feel of them and see that they are not too hot, and take particularly good care of them.

(Testimony of Melville Alcott.)

Q. Did you observe the crew eating their lunch in the acetylene plant? A. Yes.

Q. Where would they eat their lunch?

A. Right in front of the doors of the plant.

Q. You mean outside or inside?

A. Well, they would eat outside and then during the lunch period—I won't say "lunch period"—but during the time that they were eating they would probably make several trips into the plant and observe conditions.

Q. Did they all eat at the same time at the times that you saw them?

A. I don't remember as they did.

Q. They might have; you do not recall?

A. I don't recall.

Q. How long have you been in this business of this type of utility, acetylene, compressor, and oxygen work?

A. Acetylene and oxygen work was new to me when I went [176] to Calship.

Q. What type of work had you done?

A. Steam engineer for 35 years.

Q. What kind? A. Steam engineer.

Q. For 35 years? A. Yes, sir.

Q. And during that time has it always been your experience that you would eat lunch in the area where you would work? A. Always.

Mr. Sanders: No further questions.

ALVIN M. MOWREY

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Alvin M. Mowrey.

Direct Examination

By Mr. Sanders:

Q. You were employed at California Shipbuilding Corporation, Mr. Mowrey, during the war?

A. Yes. [177]

Q. What years?

A. I believe it was January, '42 until March of '46.

Q. And in October, 1943 what was your position?

A. In October of 1943 I was assistant superintendent directly under Mr. Kell. That was my title.

Q. Of what department?

A. The maintenance.

Q. Under you did you have plaintiff Hector in this case? A. Yes.

Q. Are you familiar with the duties and work performed in his capacity? A. Yes, sir; I am.

Q. Mr. Mowrey, did you ever give Mr. Hector instructions he was not to take his lunch period?

A. No.

Q. At any time during the shift?

A. I never did.

Q. Did you ever give any instructions relative to performing work during the regular shipyard lunch period?

(Testimony of Alvin M. Mowrey.)

A. Yes; I have done that on various occasions that an emergency would come up or something like that, why, orders were issued that the men were to go ahead and do the work, and then take their lunch period after the job was done; or if they knew the job was coming up and had to be done, why, it was optional whether they would take their lunch before they went out to do [178] the job or whether they would take it after they finished. I didn't make any strict rules as to when they were to eat their lunch.

Q. I believe Mr. Hector was on the graveyard shift?

A. That is right.

Q. Were you on the graveyard shift?

A. Well, I used to come in on my graveyard shift, averaged about once or twice a week, to check to see that things were going on.

Q. You were responsible for all three shifts?

A. That is right.

Q. To your knowledge how often would these emergency repairs come up?

A. Oh, I would say possibly we would have an emergency repair whereby a man was required to work his lunch hour possibly once every ten days or two weeks, something like that. But we had in one setup there in the plate shop that came up about every 90 days, we had to change the main lead lines on the acetylene and oxygen hose coming into the planograph and various machines like that, and that was so arranged that we could do that while

(Testimony of Alvin M. Mowrey.)

the main production of the yard was down, which was on their lunch hours. And we would change maybe one machine or two machines in this lunch hour, and the following lunch hour get the next two. In other words, it was so rotated that we would go right straight through these and it [179] would take us about a week to make that complete change, and then that was done for about 30 days. But all those times when that was done, why, the men would either have their lunch before they went out to do this job or they would go ahead and do the job during the regular lunch period of the yard, and then come in and eat their lunch after they had finished. And it was optional with them. I didn't give any definite orders as to when they was to eat their lunch one way or the other. [180]

* * *

Q. Did you have occasion to require a man to work other than his regular shift time?

A. No.

Q. Do you know if there were union stewards in the shipyards at all times? [181]

A. That is right.

Q. What was their function, if you know?

A. I beg pardon?

Q. What was their function, if you know?

A. I didn't catch that.

Q. What was their purpose in the yard, if you know?

A. Oh, that was to see that the men had decent

(Testimony of Alvin M. Mowrey.)

working conditions, and if a man had any grievance or something, he took it up with his steward and his steward brought it to the attention of the head of the department; and then if he didn't do anything about it, why, then it was taken directly to the union itself and the union officials would come in and meet with the department heads and they would work out and settle their grievance one way or the other.

Q. Did you ever receive any complaint from the plaintiff Hector in this case as to not being paid for his lunch period? A. No; I never did.

Q. As to having to work during his lunch period? A. No; I never did.

Q. As to having to come in before the shift began? A. No.

Q. As to having to remain after the shift ended? A. No.

Q. As to any employees in similar capacities under you? A. No; I never did. [182]

Q. At any time during your employment down there? A. No.

Mr. Sanders: You may cross-examine.

Cross-Examination

By Mr. Bertram:

Q. Mr. Mowrey, did you personally know Mr. Hector when he worked at the shipyard?

A. Yes, sir.

Q. And he was a foreman?

A. That is right.

(Testimony of Alvin M. Mowrey.)

Q. You were immediately over him in your position?
A. That is right.

Q. Was there a supervisor over him on the graveyard shift?

A. No; other than myself. There was a fellow, Dock Reynolds——

Q. Only what?

A. There was a man that was in the main office, whose name was Reynolds, “Dock” Reynolds—I don’t know what his initials were—and he was on the graveyard shift there. Well, he used to take the blunt of this situation. In other words, if an emergency came up and they had to have something right now, then their instructions was to go to Dock Reynolds. In other words, I had told Dock Reynolds to act in my capacity in that particular case, you know. [183]

Q. I see.

A. Where, for instance, if I happened to be out to a show or was late getting in or something, or something like that, they couldn’t contact me at home, why, he was to act in the capacity that I was in.

Q. All right. Now, Mr. Mowrey, you have stated that once or twice a week you would get down to the yard during the graveyard shift.

A. That is right.

Q. On those occasions did you work the entire graveyard shift?
A. No. No; I would not.

Q. You came in for the latter portion of the

(Testimony of Alvin M. Mowrey.)

graveyard shift and stayed there until your regular day shift, did you?

A. Well, sometimes I came in early on the graveyard shift and stayed right through to the day, and other times, if I happened to be in on the swing shift, why, I would lap over onto the graveyard shift, maybe, for an hour or two hours, something like that, to see that everything was going all right, you know.

Q. The longest you generally remained on the graveyard shift was an hour or two immediately after it started, lapping over from the swing shift, or an hour or two before it ended?

A. That is right.

Q. To lap over into the day shift, is that right?

A. That is right.

Q. Did I understand your testimony to be this: That about once every 90 days there was a change over of the acetylene and oxygen lead lines?

A. That is right.

Q. Which took about a week?

A. In the plate shop it took us about a week to make that change. We could not get all the machines, you know, from one lunch period. We would sometimes be able to get two of them on this lunch period, and then on the following day we would get the next two, and so on down the line that way. We had to rotate it so we would not shut the entire plant down, you see.

Q. Did all three shifts work on that change over for a week?

(Testimony of Alvin M. Mowrey.)

A. No. We worked that on graveyard and on swing shift mostly. The biggest part of it was done on the graveyard shift, and due to the fact that the graveyard shift had the lowest personnel on production, you see.

Q. In addition to that type of work that was done during lunch periods, there were emergencies, you think that came up every week or 10 days?

A. Well, it was very possible we might have one every week or 10 days, two weeks, something like that. I have got no definite dates. [185]

Q. Isn't it a fact, Mr. Mowrey, that your standing instructions to all of the men on this type of work were that in case of any emergency repair they must do it immediately?

A. That is right.

Q. And that whether they were eating their lunch or whether they were doing anything else?

A. That is right; and if it did happen during the time they were eating their lunch, then the instruction was to eat that when they got done with the job. They were to go ahead and take their lunch period.

Q. In addition to the emergency repairs there were repairs to be made constantly in that yard, weren't there, on the hoses?

A. All the time.

Q. In the case of any leak developing in the oxygen or acetylene line, that constituted a definite fire hazard, didn't it?

A. That is right.

Q. It had to be corrected immediately?

A. That is right. [186]

CLAIR IRWIN

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Clair Irwin.

Mr. Sanders: May I have these time cards marked Defendant's Exhibit E for identification?

The Clerk: As a group? Do you want them separated for the individuals?

The Court: Is there a series of time cards for each individual?

Mr. Sanders: One for each shift, your Honor. They can be A, B, and C. Make Hector's E-A, isn't it?

The Court: E-1.

Mr. Sanders: E-1.

The Clerk: All of Hector's cards E-1.

Mr. Sanders: Garcia, E-2; Yates, E-3. It may be stipulated, your Honor, that the witness is qualified to testify as to the contents of the Defendant's Exhibits E, the time cards here, and the time-keeping procedure at Calship, just to save a little time.

Mr. Bertram: So stipulated. If you wish to offer them into evidence, we have no objection.

The Court: Do you offer them?

Mr. Sanders: In a minute.

The Court: Is it stipulated that they are what they purport to be on their face?

Mr. Bertram: Yes; so stipulated.

Mr. Sanders: So stipulated.

The Court: Do you offer them?

(Testimony of Clair Irwin.)

Mr. Sanders: Very well, I will offer them all into evidence.

The Court: Exhibits E-1, E-2, and E-3 for identification are received into evidence.

Mr. Sanders: Perhaps the court would like one of these to follow with the testimony?

The Court: Very well.

Direct Examination

By Mr. Sanders:

Q. Directing your attention to Defendant's E-1, Mr. Irwin, will you please state what that is? What kind of a card is it?

A. It is a tabulating card for time-keeping of the employee.

Q. Is it commonly known as a time card?

A. Time card or IBM card. [190]

Q. Was that the card that was used for all hourly-rate employees of Calship?

A. That is correct.

Q. E-1 is plaintiff Garcia, is it not—no; plaintiff Hector?

The Court: What shift was he on?

The Witness: He was on the graveyard shift.

Q. (By Mr. Sanders): How do you ascertain that on the card? A. On the very top line.

Q. Whereabouts?

A. On this card it shows the department the man was in, then it shows the badge number, then his classification and then the shift.

The Court: "Shift 1" is the graveyard shift, is it?

(Testimony of Clair Irwin.)

The Witness: No; "shift 3," sir.

The Court: Shift 3 is the graveyard shift and 2 is the swing shift and 1 is the day shift?

The Witness: And 1 is the day shift; that is correct, sir.

Q. (By Mr. Sanders): The Arabic "1" above the printed word "shift" indicates the shift that the man was on, is that correct?

A. That is right.

Q. The next column to the right of the "shift" column, what does that indicate? [191]

A. That is his rate of pay.

Q. In terms of dollars and cents, is that right?

A. That is correct.

The Court: That is the hourly rate?

The Witness: Yes, sir.

of the card you have three columns: "Actual hours worked," "allowed hours," and "total hours paid"?

A. Yes.

Q. What is inserted under "actual hours worked"?

A. Well, it is the actual hours that the man has put in for that particular period.

Q. What period does one of these cards represent, Mr. Irwin?

A. Well, we will take Hector on graveyard shift. It shows him working actually seven hours and allowing one hour premium, making the total of eight hours.

(Testimony of Clair Irwin.)

Q. These cards represent the employee's time for a day, a week, a month or what? A. A day.

Q. A day. Under "actual hours worked" are the hours inserted there that he ultimately worked on that shift, is that right, according to his time-keeping card? A. That is correct.

Q. What is the "allowed hours"; what does that represent? [192]

A. That represents, either on swing or on graveyard, to work those shifts we had a premium of a half an hour on swing and an hour on graveyard, which was "allowed time," making a total up to eight hours plus a premium of 10 per cent on swing and 15 per cent on graveyard over the hourly rate that is shown on the card.

Q. What were the working hours on the day shift, clock hours?

A. The day shift normal working hours were eight hours per day.

Q. What were the clock hours?

A. Oh, from 8:00 until 4:30.

Q. And the shift on the swing?

A. Swing was 4:30 until 12:00.

Q. And grave? A. 12:30 until 8:00.

Q. You say that swing shift was 4:30 to 12:00, or 4:30 to 12:30?

A. I am sorry. I made a mistake. It is 4:30 until 12:30. There was no omission.

Q. You state that there was a premium of 10 per cent on the swing shift and 15 per cent on the grave

(Testimony of Clair Irwin.)

shift given to the men in addition to their regular pay, is that right?

A. That is right, inducement.

Q. Also, he was allowed on the swing shift a half hour [193] time and on the graveyard shift, one hour time, for each day worked?

A. That is correct.

Q. Was that system changed at any time?

A. Yes. On November, on the week ending November the 19th, 1944, they ballooned the rates, as they called it. In other words, they changed the rate from flat rate to percentage of 10 per cent or 15 per cent. In other words, in the early days, a mechanic making \$1.20 an hour, the accounting and timekeeping division figured his rate of pay at the end of the week by adding the 10 per cent or 15 per cent. So then, in order for us to attempt to make our rates more attractive—we had a tremendous recruiting section—we thought by showing a higher rate we might be able to induce a lot of men to come to us; so we took the \$1.20 rate, and, naturally, on days they were the same, but on graveyard they blew it up and paid actually, instead of seven and one-half hours plus one-half hour allowed time, they only paid them seven and one-half hours but the rate had been ballooned so he got the same amount of pay as if he had been working under the old schedule.

The Court: That, as I understand it, the day shift, the total duration of the day shift, was eight and one-half hours?

(Testimony of Clair Irwin.)

The Witness: That is it.

The Court: Of which a half hour was lunch period?

The Witness: Lunch period. [194]

The Court: On the employee's time. Presumably he would work the full eight hours?

The Witness: That is correct.

The Court: On the swing shift the total duration of the shift was eight hours?

The Witness: Eight hours.

The Court: Of which presumably he would work seven and one-half and have a half hour; on the graveyard shift the total duration of the shift was only seven and one-half hours?

The Witness: That is correct.

The Court: Of which presumably the employee would work seven and have a half hour for lunch, but would receive pay for eight?

The Witness: For eight hours; that is correct, sir.

The Court: At the same rate. Later, instead of allowing him eight hours and paying him at the day shift rate, they increased the rate and allowed him for only the hours actually worked, is that it?

The Witness: That is correct.

The Court: That is seven hours?

The Witness: That is correct.

Q. (By Mr. Sanders): And at the time that was done, the actual rate of pay in the column I have previously referred to was changed, was it not?

A. Yes. [195]

(Testimony of Clair Irwin.)

Q. Take plaintiff Hector: Was it plaintiff Hector that was on the graveyard there, defendant's E-1? A. Yes.

Q. What was his rate prior to the week ending November 19, 1944? A. \$1.72½ per hour.

Q. What was his rate subsequent to that time? A. \$1.97.1 per hour.

Q. Then I take it, if he did not work any overtime after the change in rate, he would receive no credit in the column "allowed hours" on the time card, is that right? A. That is correct.

Q. The time that the man clocked in is indicated in the lower right portion of the time card, is that correct? A. In most cases; yes.

Q. And also, the time that he clocked out?

A. That is correct.

Q. What was the procedure required to employ a man over and beyond his regular shift time, Mr. Irwin?

A. I beg your pardon. I did not hear it.

Q. What was the procedure in the yard if it was desired to work a man over and beyond his regular shift time, in other words, overtime?

A. Well, his foreman over the particular man that was going to be employed would have to go to his superintendent and [196] request—not necessarily by name, but he would have to request 10 men, five men or one man. That would have to go in to labor management for approval, and then that approval would go to the timekeeping division, and whatever area the men were to be worked in, why,

(Testimony of Clair Irwin.)

the timekeepers would be so advised, otherwise they could not work.

Mr. Sanders: I believe that is all. Your Honor, I would just like to point out that all the time cards, E-1, -2, and -3 merely represent the day shift before the week ending November, 1944, and after that date, and the same for the grave and swing, to illustrate that the swing and grave changes were made as he testified, and the day continued the same. That is the purpose of it.

Cross-Examination

By Mr. Bertram:

Q. Mr. Irwin, no compensation was paid to any man for work on the lunch period, was it?

A. In some instances; yes.

Q. Are those the instances of which some questions have been asked with respect to getting advance authority to have work performed?

A. No; not necessarily.

Q. What instances were they?

A. Well, I don't think any of the instances would refer to this particularly. [197]

Q. Can you give me an example?

A. To this particular case, but we had many spots where we had to work men on a lunch hour and they were paid for their lunch period, but it was authorized time to work.

Q. I see. In the case of Hector, whose rate before the week ending November 19, 1944, was \$1.72 and whose rate, as shown on the card for the week

(Testimony of Clair Irwin.)

following 11-19-44 was \$1.97.1, that difference in rate did not represent an increase in pay for the man, did it? A. No.

Q. He got before that change that was made exactly the same amount of money for each hour he worked as he got after the change was made?

A. That is correct.

Q. In other words, then, Mr. Irwin, so that we understand your testimony, if Mr. Hector before the week of November 19, 1944, had come in on his graveyard shift and worked only two hours, and then gone home, he would have been paid two times \$1.97.1? A. That is right.

Q. Even though his basic rate, as shown on the card, was \$1.72?

A. Yes; that is right; that is right.

Q. That change, therefore, represented only an accounting or bookkeeping change and no real change in wages? [198]

A. That is correct.

Mr. Sanders: Just a minute. I object to that as calling for a conclusion of the witness on the very issue of what the rate is here. The facts are before the court as to what the change is. The conclusion of this witness as to what it is, I think it is immaterial, irrelevant, and calling for a conclusion of the witness.

The Court: Will you repeat the question again, please?

(Testimony of Clair Irwin.)

(Question read by the reporter.)

The Court: The objection is sustained and the answer is stricken.

Q. (By Mr. Bertram): Now, Mr. Irwin, when you state that the change was made in order to make your rates more attractive, the purpose of the change therefore was not to show that there was an increase in wages, was it?

Mr. Sanders: The same objection, your Honor, as calling for a conclusion of the witness.

Mr. Bertram: I think he knows what the purpose was.

The Court: Overruled. You may answer.

A. To the best of my knowledge, it was for two purposes: One was an accounting feature and the other, as you say, was to make the rates more attractive.

Q. (By Mr. Bertram): You are, of course, familiar with the provisions of the contract respecting the allowance of hours and the allowance of the shift premium, as you have [199] testified?

A. Yes.

Q. When the men working on a swing shift were allowed one-half hour on their time card, that was one-half hour for the work which they performed; in other words, for the seven and one-half hours which they were actually allowed, wasn't it?

A. It was the premium, the inducement to work the swing shift, we will say, a half hour plus their premium.

(Testimony of Clair Irwin.)

Q. And the same is also true of the 10 per cent premium? A. That is right.

Q. Those premiums were paid for the hours which you considered hours worked on the time card?

A. You are speaking of before November 19, 1944?

Q. Yes. A. That is correct.

Q. And your answers would be the same with respect to the graveyard shift premium?

A. That is right.

Q. None of that compensation which we have called "premiums" was given a man for any excess time beyond his regular shift which he might be required to work, was it?

A. If he was authorized to work, why, sure, he got his additional time.

Q. No. I am asking you, Mr. Irwin, about these shift premiums, the percentage premium and the time premium. Neither [200] of those premiums were given a man to compensate him for any hours he might be required to work beyond his designated shift, were they? A. No. [201]

* * *

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the

United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 1st day of June, A.D. 1949.

/s/ ALBERT H. BARGION,
Official Reporter.

[Endorsed]: Filed C.C.A. June 6, 1949.

[Endorsed]: No. 12257. United States Court of Appeals for the Ninth Circuit. Edward R. Biggs, John R. Hector, H. J. Lueder and Martin M. Moreno, Appellants, vs. Joshua Hendy Corporation, Appellee.

Joshua Hendy Corporation, Appellant, vs. Edward R. Biggs, John R. Hector, H. J. Lueder and Martin M. Moreno, Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed June 6, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the Circuit Court of Appeals of the United
States in and for the Ninth Circuit

No. 12257

E. R. BIGGS, et al.,

Appellants and Cross-Appellees,

vs.

JOSHUA HENDY CORPORATION, a Corpo-
ration,

Appellee and Cross-Appellant.

STIPULATION AND ORDER THAT CERTAIN
EXHIBITS MAY BE CONSIDERED BY
COURT WITHOUT INCLUSION IN
RECORD

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled action that plaintiffs', appellants herein, Exhibit 1, being the Master Labor Agreement, and defendant's, appellee herein, Exhibit A, being contract to build ships, and Exhibit E (1) and (2), being time cards, need not be designated for inclusion in the printed record on appeal if the above-entitled court will so order that said exhibits shall be considered in their original form without inclusion in the said printed record on appeal, since said exhibits each contain much matter extraneous to the issues involved.

In the event that this stipulation is not approved by the above-entitled Court, it is stipulated that

said exhibits shall be included in the printed record on appeal.

Dated: June 23, 1949.

MOHR & BORSTEIN &
PERRY BERTRAM.

By /s/ PERRY BERTRAM,

Attorneys for Appellants and
Cross-Appellees.

THELEN, MARRIN, JOHNSON
& BRIDGES.

By /s/ ROBERT H. SANDERS,

Attorneys for Appellee and
Cross Appellant.

It is so ordered, and the exhibits herein named will be considered in their original form without their being printed in the record on appeal.

Dated: June 24, 1949.

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ WILLIAM HEALY,
/s/ W. E. ORR,
U. S. Circuit Judges.

[Endorsed]: Filed July 5, 1949.

[Title of Court of Appeals and Cause.]

CROSS-APPELLANT'S POINTS ON APPEAL

Cross-Appellant in the above-entitled action, in compliance with Rule 19, Subdivision 6 of the Rules of Practice of the above-entitled Court, submits its Points on Appeal.

The District Court erred as follows:

(1) In ruling that Cross-Appellees' activities were subject to the Fair Labor Standards Act of 1938, as amended.

(2) In ruling that any of the Cross-Appellees or the Cross-Appellant were engaged in the production of goods for interstate commerce or in processes and occupations necessary to such production within the meaning of the Fair Labor Standards Act of 1938, as amended.

(3) In ruling that the one-half hour lunch period taken by Cross-Appellees was a compensable activity within the meaning of the Fair Labor Standards Act of 1938, as amended.

(4) In ruling that Section 2 (d) of the Portal-to-Portal Act of 1947 did not deprive the Court of jurisdiction of Cross-Appellees' action.

(5) In ruling that the one-half hour lunch period taken by Cross-Appellees was a compensable activity by reason of an express provision of the written contract in effect at the time between Cross-Appellees' collective-bargaining representatives and Cross-Appellant, within the meaning of Section 2 of the Portal-to-Portal Act of 1947.

(6) In ruling that Cross-Appellee Edward R. Biggs performed compensable activities, for which he was not compensated, each and every day of his employment, by Cross-Appellant during the period in issue.

Dated: July 12, 1949.

THELEN, MARRIN, JOHNSON
& BRIDGES.

By /s/ ROBERT H. SANDERS,
Attorneys for Appellee and
Cross-Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 13, 1949.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON APPEAL ON
BEHALF OF APPELLANTS

The appellants hereby designate the following points on appeal:

1. The Court erred in reaching the following conclusion of law:

“6. The defendant is entitled to credit against all of the half hour lunch periods worked by any of the plaintiffs on the swing shift by reason of the half hour premium paid to said plaintiffs pursuant to paragraph V (c) of the Collective Bargaining Agreement relative to ‘second shift’ * * *”

2. The court erred in reaching the following conclusion of law:

“7. The defendant is entitled to credit against all of the half hour lunch periods worked by any of the plaintiffs on the graveyard shift by reason of the one hour premium paid to said plaintiffs pursuant to paragraph V (c) of the Collective Bargaining Agreement relative to ‘third shift’ * * *”

3. The Court erred in reaching the following conclusion of law:

“8. Plaintiffs, Edward R. Biggs, H. J. Lueder and Martin M. Moreno, are not entitled to recover any unpaid overtime wages or liquidated damages by reason of the fact that their lunch periods were worked on the swing shift or on the graveyard shift during their entire periods of employment, and plaintiffs, John S. Garcia and John R. Hector, are not entitled to recover any unpaid overtime wages or liquidated damages for the portion of their employment worked by them on the swing shift or graveyard shift.”

4. The Court erred in failing to find as a matter of fact that none of the plaintiffs received any compensation for the services performed by them during the half hour lunch periods.

5. The Court erred in failing to conclude as a matter of law that the one half hour additional compensation paid to appellants who were on the swing shift was paid as additional compensation for the hours actually credited to them excluding their lunch period and served to increase their regular rate of pay.

6. The Court erred in failing to conclude as a

matter of law that the one hour additional compensation paid to appellants who were on the graveyard shift was paid as additional compensation for the hours actually credited to them excluding their lunch period and served to increase their regular rate of pay.

7. The Court erred in failing to award judgment for overtime for lunch periods worked by each of the appellants herein.

Respectfully submitted,

MOHR AND BORSTEIN and
PERRY BERTRAM.

By /s/ PERRY BERTRAM,

Attorneys for Appellants.

[Endorsed]: Filed July 14, 1949.

[Title of Court of Appeals and Cause.]

STIPULATION DESIGNATING RECORD TO
BE PRINTED ON APPEAL

It Is Hereby Stipulated, by and between appellants and cross-appellees and appellee and cross-appellant, that the following pleadings and exhibits be prepared as the record on the appeal and on the cross-appeal:

1. Second Amended Complaint. Filed 6/30/48.
2. Answer to Second Amended Complaint. Filed 7/28/48.
3. Pre-Trial Stipulation of Facts and Issues. Filed 6/7/48.

4. Order on Pre-Trial Proceedings. Filed 7/13/48.
5. Findings of Fact and Conclusions of Law. Filed 2/21/49.
6. Judgment. Filed 2/21/49.
7. Notice of Appeal. Filed 3/22/49.
8. Dismissal of Appeal of John S. Garcia. Filed 5/6/49.
9. Notice of Cross-Appeal. Filed 4/13/49.
10. Order Extending Time to Prepare Record. Filed 4/27/49.
11. Stipulation and Order That Exhibits Be Considered by the Court Without Being Printed in the Record on Appeal.
12. Statement of Appellants' Points on Appeal.
13. Statement of Cross-Appellants' Points on Cross-Appeal.

The following portions of the Reporter's Transcript of the Trial:

- (a) Commencing on page 14, line 8, and ending on page 21, line 20, inclusive.
- (b) Commencing on page 22, line 5, and ending on page 38, line 14, inclusive.
- (c) Commencing on page 58, line 1, and ending on page 67, line 23, inclusive.
- (d) Commencing on page 68, line 17, and ending on page 87, line 10, inclusive.
- (e) Commencing on page 93, line 11, and ending on page 105, line 13, inclusive.
- (f) Commencing on page 107, line 12, and ending on page 112, line 3, inclusive.

(g) Commencing on page 114, line 10, and ending on page 115, line 16, inclusive.

(h) Commencing on page 117, line 12, and ending on page 121, line 2, inclusive.

(i) Commencing on page 127, line 1, and ending on page 152, line 15, inclusive.

(j) Commencing on page 160, line 10, and ending on page 169, line 25, inclusive.

(k) Commencing on page 171, line 11, and ending on page 177, line 11, inclusive.

(l) Commencing on page 177, line 16, and ending on page 180, line 8, inclusive.

(m) Commencing on page 181, line 21, and ending on page 186, line 20, inclusive.

(n) Commencing on page 189, line 5, and ending on page 201, line 4, inclusive.

Dated: July 14, 1949.

MOHR AND BORSTEIN and
PERRY BERTRAM.

By /s/ DAVID L. MOHR,
Attorneys for Appellants and
Cross-Appellees.

THELEN, MARRIN, JOHNSON & BRIDGES—
SAMUEL S. GILL and ROBERT H. SANDERS.

By /s/ ROBERT H. SANDERS,
Attorneys for Appellee and
Cross-Appellant.

[Endorsed]: Filed July 19, 1949.

